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INDEX VOLUME.

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS

FIFTH CIRCUIT.

No. 16,632

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Appellant,

versus

J. M. BROWN, JR., ET AL.,
Appellees.

Appeal from the United States District Court for the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 22/57.)

VOLUME I.

INDEX

	PAGE
Complaint	1
Plaintiff's Demand for Jury Trial	5
Amendment to Complaint	6
Amendment to Complaint	7
Motion of Defendant, J. M. Brown, Jr., to Dismiss Complaint and Complaint as Amended	8
Motion of Defendant, T. A. Kennedy to Dismiss Complaint and Complaint as Amended	9
Motion of Defendant, J. B. Otts, Jr., to Dismiss Complaint and Complaint as Amended	10
Motion of Defendant, H. K. Parker to Dismiss Complaint and Complaint as Amended	11
Motion of Defendant, J. M. Weldon to Dismiss Complaint and Complaint as Amended	12
Motion of Defendant, H. E. Southerland to Dismiss Complaint and Complaint as Amended	13
Motion of Defendant, C. L. McCutchen to Dismiss Complaint and Complaint as Amended	14
Motion of Defendant, W. L. Grissom to Dismiss Complaint and Complaint as Amended	15
Motion of Defendant, M. L. Hall to Dismiss Complaint and Complaint as Amended	16
Motion of Defendant, R. A. Sutterlin to Dismiss Complaint and Complaint as Amended	17
Motion of Defendants, H. M. Baum and R. H. Letchman to Dismiss Complaint	18
Motion of Defendant, A. R. Thomas to Dismiss Complaint	21
Order entered 12/30/55 on Motions of Defendants to Dismiss	24
Motion of Defendants, J. M. Brown, et al., for Judgment on the Pleadings	27

INDEX—Continued

	PAGE
Answer of Defendants to Complaint as Amended ..	29
Motion of Defendants, H. M. Baum, et al., for Judgment on the Pleadings	34
Answer of Defendants, H. M. Baum, et al., to Count 3 of the Complaint as Amended	35
Request of Defendants, H. M. Baum, et al., for Admissions	40
Response of Plaintiff to Request for Admissions of Defendants, H. M. Baum, et al.	43
Order on Pre-Trial Hearing, entered 2/1/56	45
Order entered 2/6/56 on Defendants' Motion for Judgment	47
Motion of Defendants, J. M. Brown, et al., to set aside Order entered 2/6/56 on Defendants' Motion for Summary Judgment	48
Order entered 2/24/56 on Motion of Defendants, J. M. Brown, et al., to reconsider and to set aside Order of 2/6/56, etc.	50
Amendment to Complaint	51
Amended Answer of Defendants, J. M. Brown, Jr., et al.	53
Reassignment of Motions, Responses and Defenses by Defendant, T. A. Kennedy	57
Motion of Defendants, H. M. Baum, et al., to Dismiss the Complaint as Last Amended	58
Answer and Affirmative Defenses of Defendants, H. M. Baum, et al., to the Complaint as Last Amended	60
Interrogatories Propounded by Defendants, J. M. Brown, Jr., et al., to Plaintiff	62
Amended Interrogatories Propounded by Defendants, J. M. Brown, Jr., et al., to Plaintiff	96

INDEX—Continued

	PAGE
Order entered 4/3/56 Overruling Defendants' Motions to Dismiss Count 3 of Complaint as Amended, etc.	104
Amendment to Order of 4/3/56, entered 4/12/56	105
Plaintiff's Answers to Defendants' Interrogatories	106
Motion of Plaintiff to drop T. A. Kennedy as Party Defendant	149
Order entered 8/16/56 dropping T. A. Kennedy as party Defendant	152
Motion of Plaintiff to Bring in Additional Parties	152
Order entered 8/16/56 Granting motion of Plaintiff to bring in Additional Parties	155
Motion of Plaintiff to Construe Pre-Trial Order	155
Order entered 8/29/56 Amending Pre-Trial Order of 2/1/56	158
Answer and Defense of Defendants, Bruce Barnett, et al., to the Complaint as Amended	158
Amendment to Complaint	164
Amended Answer and Defense of Defendants, J. M. Brown, Jr., et al.	166
Amended Answer of Defendants, H. M. Baum, et al.	169
Order entered 9/25/56 Overruling Motions to Dismiss filed by Certain of the Defendants	170
Transcript of Proceedings	171
Evidence for Plaintiff:	
Testimony of Floyd L. Fleming	172
F. M. Edwards	201
T. A. Kennedy	214
D. C. Vann	240
A. J. Smith	257
William L. Logan	272
Portion of Deposition of H. K. Parker	289

INDEX—Continued

	PAGE
Transcript of Proceedings—(Continued):	
Evidence for Plaintiff—(Continued):	
Testimony of L. P. Jordan	294
Ben Mitchell	308
Ben Mitchell (Resumed)	326
Exhibit Defendants' #3—Letter, J. B. Quiggins, Master Mechanic to B. M. Mitchell, dated 10/18/55	370
Testimony of C. E. Woelde	396
H. T. Simrell	414
R. E. Thomas	434
E. E. Houts	447
Irvin Rich	470
E. D. Saylor	485
P. O. Chapman	491

VOLUME II.

Ed Dougherty	510
E. L. Sexton	518
R. H. Petty	555
Lee Thomas	567
Claude Johnston	576
John D. Long	590
James McKenzie	604
John C. Mehaffey	609
Thomas L. LeCroix, Jr.	618
T. B. Wilder	623
Thomas C. Brown, Sr.	641
Eddie B. Kelly	651
Earl Webb	659
Hugh C. Davidson	664
J. P. Pritchett	670

INDEX—Continued

PAGE

Transcript of Proceedings,—(Continued):
Evidence for Plaintiff—(Continued):
Portion of Deposition of Mr. Letchman 679
Portion of Deposition of H. M. Baum 698
Portion of Deposition of J. B. Otts 702
Portion of Deposition of A. R. Thomas 709
Testimony of C. L. Hobson 713
William M. Breidenthal 741
William M. Breidenthal (Resumed) 758
Willard H. Thompson 773
Carl Bratton 795
E. H. Major 826
Evidence for Defendants:
Testimony of Howard Eugene Southerland 843
James H. Duncan 853
John C. Smith 869
Louis Wilkes 875
W. L. Grissom 882
W. F. Pennington 924
H. K. Parker 979
J. M. Weldon 1000
A. R. Thomas 1015

VOLUME III.

A. R. Thomas (Resumed) ... 1027
J. O. Bentley 1088
Bruce Barnett 1114
Jack Wall 1142
J. W. Huckaby 1151
Donald E. Mullins 1155
H. M. Baum 1167

INDEX—Continued

PAGE

Transcript of Proceedings, etc.—(Continued):
Evidence for Defendant—(Continued):
Testimoy of R. A. Sutterlin 1201
M. L. Hall 1234
O. C. Breedlove 1253
R. H. Letchman 1275
Howard Eugene Anderson .. 1305
J. B. Otts, Jr. 1329
C. L. McCutcheon 1373
J. M. Brown, Jr. 1396
Certain Questions and Answers propounded by Defendants to Plaintiff 1410
Testimony of Tommy E. Davis 1424
L. O. Phillips 1428
James William Johnson 1433
C. F. Woelflin 1439
C. S. Black 1443
Renewed Motion of Defendants at the close of all the evidence for a Directed Verdict, Ruling reserved 1446
Motion of Plaintiff at the close of all the evidence for a Directed Verdict, Ruling reserved .. 1446
Plaintiff excepts to this ruling as to each of the defendants, separately and severally 1447
Plaintiff announces that in view of the court's ruling it will dismiss as to Defendants Southerland & Sutterlin as Party Defendants 1447
Charge of the Court 1447
Exception of Plaintiff to Charge of the Court .. 1462
Exception of Plaintiff to Ruling of the Court on Special Charges 1462
Further Charge of the Court 1469

INDEX—Continued

PAGE

Transcript of Proceedings—(Continued):
Exhibit Defendants' #1—Notice of Louisville and Nashville Railroad Co., Office of Master Mechanic posted on Bulletin Board dated 10/19/55 1471
Exhibit Defendants' #3—Letter, J. B. Quiggins, Master Mechanic to B. M. Mitchell, dated 10/18/55 1472
Exhibit Defendants' #6—Letter, Brotherhood of Locomotive Firemen & Enginemen to W. S. Scholl, Director of Personnel, Louisville & Nashville RR., Co., dated 10/20/55 1473
Motion of Defendants for a Directed Verdict 1474
Motion of Plaintiff for a Directed Verdict 1482
Defendants' Given Charges 1484
Plaintiff's Charges Refused 1504
Verdicts of the Jury 1525
Clerk's Court Minutes:
Judgment entered 10/2/56 1529
Grounds of Objection to Court's Refusal to Grant Certain Instructions Requested by Plaintiff .. 1531
Motion of Plaintiff for New Trial 1538
Objections of Defendants to Amendment Motion to Motion of Plaintiff for New Trial, etc. 1546
Amendment of Plaintiff for New Trial 1548
Affidavit of Ted B. Wilder, dated 10/22/56 1551
Affidavit of E. L. Sexton, dated 10/11/56 1553
Affidavit of C. F. Hobson, dated 11/14/56 1556
Order entered 12/26/56 Overruling Motion of Plaintiff for New Trial 1559
Notice of Appeal 1560
Appeal Bond 1561

INDEX—Continued

	PAGE
Appellants' Designation of Contents of Record on Appeal	1562
Appellant's Statement of Points on Appeal	1565
Appellees' Additional Designation of Contents of Record on Appeal	1569
Motion and Order extending time to file Record in Appellate Court, entered 2/26/57	1570
Order entered 4/18/57 Transmitting Original Exhibits to Appellate Court	1573
Clerk's Certificate	1574

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VOL. I.

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,632

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Appellant,

versus

J. M. BROWN, JR., ET AL.,
Appellees.

Appeal from the United States District Court for the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 22/57.)

COMPLAINT.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

Filed in Clerk's Office, Northern District of Alabama, October 25, 1955.

Civil Action No. 8171.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Corporation,

Plaintiff,

versus

J. M. BROWN, JR., J. B. OTTS, T. A. KENNEDY, H. M. BAUM, A. R. THOMAS, H. K. PARKER, J. M. WELDON, H. E. SOUTHERLAND, C. L. McCUTCHEON, W. L. GRISSOM, M. L. HALL, R. A. SUTTERLIN, W. C. BURNETT, and R. H. LETCHMAN, and any other person or association of persons participating in the commission of the wrongs complained of,

Defendants.

Comes the plaintiff in the above styled cause and exhibits this its complaint in said action as follows:

1. The plaintiff is a corporation organized and existing under the laws of the State of Kentucky and a resident citizen of said State Plaintiff is engaged as a common carrier by rail of Interstate Commerce and of the United States mail in and through the

Northern District of Alabama in which district it does business by Agent. The defendants are each over the age of 21 years and are resident citizens of Jefferson County, Alabama.

The amount in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00 and the jurisdiction of this Court is rested upon diversity of citizenship and the amount in controversy. Jurisdiction is further rested as an independent basis thereof upon the existence of a federal question being involved in the issues between the parties as herein averred.

2. Plaintiff claims of the defendants, separately and severally, the sum of $250,000.00 damages and hereinafter sets forth in separate counts each of its causes of action as follows:

Count One.

3. Plaintiff avers that defendants are employees of the plaintiff and that there is imposed upon them and each of them by the provisions of 45 U.S.C. Sections 151, 152, et seq. the duty to exert every reasonable effort to settle all disputes between the plaintiff and its employees whether arising out of the application of previously made agreements or otherwise, in order to avoid any interruption of interstate commerce or of the operation of the business of the plaintiff as a carrier of interstate commerce.

4. Plaintiff further avers that the defendants, separately and severally, have on or about October 23, 1955, breached and utterly failed to discharge said statutory duty in that they wilfully refused to exert

any effort to settle an existing dispute but did on he contrary on or about said date without cause and excuse and without notice to plaintiff, wilfully and maliciously cause a shut-down or work stoppage on the lines of the plaintiff in Jefferson County, Alabama, resulting in a complete paralysis of plaintiff's operation as a common carrier of interstate commerce in said county and surrounding areas and that as a proximate result thereof plaintiff has been injured in the amount of, to-wit, $250,000.00 for which plaintiff makes claim of the defendants herein.

Count Two.

5. Plaintiff avers that prior to October 23, 1955 it had entered into an agreement concerning wages, hours, working conditions and other matters relating to conditions of employment of certain of its employees among whom were these defendants with a labor organization of which the defendants were on said date and prior thereto members and that the defendants had knowledge of said agreement and the terms thereof. Plaintiff avers that according to the provisions of said agreement all grievances or disputes were to be settled in a specified manner consistent with the Railway Labor Act.

And plaintiff further avers that on or about said date, the defendants conspired to and in combination did wilfully and maliciously cause or procure a breach of said agreement between plaintiff and the said labor organization in that they did on the occasion of a dispute or grievance within the scope of said agreement fail and refuse to follow specified procedure and did on the contrary render the same

impossible in that they did without notice to plaintiff and without legal cause undertake to force plaintiff to yield and forego its right to have such dispute or grievance settled as provided in said agreement and instead to submit without arbitration or hearing to the arbitrary demands of the defendants and that in furtherance of said illegal and wrongful design they did wilfully and maliciously cause a shut-down or work stoppage on the lines of the plaintiff resulting in a complete paralysis of the operations of the plaintiff as a common carrier of interstate commerce in Jefferson County, Alabama, and that the plaintiff was damaged thereby as a proximate result thereof in the amount of $250,000.00 for which plaintiff herein claims damages.

Count Three.

6. Plaintiff avers that on, to-wit, October 23, 1955 it was engaged in the lawful business of a common carrier of interstate commerce operating in Jefferson County, Alabama where it had a right to be and that it was conducting its said operation in a lawful manner. Plaintiff further avers that on or about said date, the defendants did enter into a conspiracy or combination for the purpose of hindering, delaying and preventing the plaintiff from carrying on its lawful business as a common carrier of interstate commerce in that they did wilfully and maliciously and without excuse cause a shut-down or work stoppage of the plaintiff's railroad lines resulting in a complete paralysis of the operations of the plaintiff as a common carrier of interstate commerce in Jefferson County, Alabama, and as a proximate consequence thereof, plaintiff has been damaged in the amount of

$250,000.00 for which it claims damages from the defendants.

H. G. BREETZ,
GIBSON & GIBSON,
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

Of Counsel:
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama.

GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

Plaintiff demands a jury for the trial of all issues of fact arising in this cause.

ROBERT McD. SMITH,
Attorney for Plaintiff.

AMENDMENT TO THE COMPLAINT.

Filed October 27, 1955.

(Title Omitted.)

Leave of Court being first had, the plaintiff amends the complaint by striking therefrom as a party defendant, W. C. Burnett.

H. G. BREETZ,
(H. G. Breetz),
ROBERT McD. SMITH,
(Robert McD. Smith),
GIBSON & GIBSON,
(Gibson & Gibson),
LANGE, SIMPSON, ROBINSON & SOMMERVILLE,
(Lange, Simpson, Robinson & Somerville),
Attorneys for Plaintiff.

Certificate of Service.

A copy of the foregoing amendment has been served by mail upon Honorables Macey Taylor and Erle Pettus, Jr., attorneys for defendants.

J. A. SIMPSON,
Attorney for Plaintiff.

AMENDMENT TO THE COMPLAINT.

Filed Nov. 9, 1955.

(Title Omitted.)

Leave of the Court first being had, the plaintiff amends the complaint by striking therefrom as a party defendant, J. B. Otts, and by adding thereto as a party defendant, J. B. Otts, Jr.

H. G. BREETZ,
(H G. Bretz),
ROBERT McD. SMITH,
(Robert McD. Smith),
GIBSON & GIBSON,
(Gibson & Gibson),
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
(Lange, Simpson, Robinson & Somerville),
Attorneys for Plaintiff.

Of Counsel:
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama.

GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

Certificate of Service.

A copy of the foregoing amendment has been served by mail upon Honorables Macey Taylor and Earle Pettus, Jr., attorneys for defendants.

ROBERT McD. SMITH,
Attorney for Plaintiff.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, J. M. Brown, Jr., by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
As Attorneys for the Defendant, J. M. Brown, Jr.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
J. M. Brown, Jr.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, T. A. Kennedy, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
T. A. Kennedy.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
T. A. Kennedy.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, J. B. Otts, Jr., by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
J. B. Otts, Jr.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
J. B. Otts.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, H. K. Parker, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
H. K. Parker.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
H. K. Parker.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, J. M. Weldon, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
J. M. Weldon.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
J. M. Weldon.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, H. E. Southerland, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
H. E. Southerland.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
H. E. Southerland.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, C. L. McCutcheon, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
C. L. McCutcheon

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
C. L. McCutcheon

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, W. L. Grissom, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
W. L. Grissom.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
W. L. Grissom.

MOTION TO DISMISS.

Filed Nov. 14, 1956.

(Title Omitted.)

Comes the defendant, M. L. Hall, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, seperately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
M. L. Hall.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1956.

ERLE PETTUS, JR.,
Attorney for the Defendant,
M. L. Hall.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, R. A. Sutterlin, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
R. A. Sutterlin.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
R. A. Sutterlin.

MOTION TO DISMISS.

Filed November 14, 1955.

(Title Omitted.)

Now come the Defendants, H. M. Baum and R. H. Letchman, by and through their attorney, R Macey Taylor, and hereby present to the Court their motion to dismiss the complaint filed herein and each paragraph thereof separately and eeverally and as grounds therefor assign the following separately and severally:

1. The Complaint fails to state a cause of action for which relief may be granted.

2. The Complaint is vague and uncertain.

3. The Complaint does not apprise the Defendants, with sufficient clarity, of the charge they are called upon to defend.

4. The action is capricious.

5. Plaintiff's allegation that the Defendants breached a statutory duty is but a conclusion of the Plaintiff.

6. For aught that appears in the Complaint, the Defendants have in every respect discharged the duty imposed upon them by the provisions of 45 USC Section 151, 152, et seq.

7. The Complaint fails to allege any facts which constitute a breach of any statutory duty imposed on the Defendants.

8. For aught that appears in the Complaint, the Plaintiff has failed to discharge the duty imposed upon the Plaintiff by the provisions of 45 USC Section 151, 152, et seq.

9. It affirmatively appears from the Complaint that the Plaintiff has failed to discharge the statutory duty imposed upon it by the provisions of 45 USC 151, 152 and 156.

10. The allegaion that the Defendants conspired to and in combination did willfully and maliciously procure a breach of an agreement is a mere conclusion of the pleader and is not supported by any factual averment.

11. There are no facts alleged in the Complaint which disclose any duty of the Defendants to the Plaintiff, the breach of which would render the Defendants liable to the Plaintiff.

12. There are no facts alleged in the Complaint alleging a breach of any duty owed by the Defendants to the Plaintiff.

13. The Complaint fails to allege that the Defendants combined for the accomplishment of an unlawful purpose.

14. The Complaint fails to allege that the Defendants combined for the purpose of accomplishing a purpose, not in itself unlawful, by unlawful means.

15. The Complaint fails to contain allegation of facts justifying a legal conclusion of unlawful conspiracy.

16. The Complaint fails to accurately describe the alleged illegal purpose or means which the alleged conspirators meant to accomplish or resort to.

17. It appears from the allegations contained in the Complaint that the Plaintiff has an adequate remedy under the Railway Labor Act, Title 45 USC Section 153 et seq.

18. For aught that appears in the Complaint, the National Railroad Adjustment Board has exclusive jurisdiction over the dispute alleged to exist by the Plaintiff.

19. It affirmatively appears from the Complaint that the Plaintiff has not exhausted its administrative remedies.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for H. M. Baum
and R. H. Letchman.

Certificate of Service.

I certify that I have this 14th day of November, 1955, served a copy of the foregoing Motion on Robert

McDavid Smith, Esq., one of the attorneys for the Plaintiff, by delivering a copy to his office.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for H. M. Baum
and R. H. Letchman.

MOTION TO DISMISS.

Filed November 17, 1955.

(Title Omitted.)

Now comes the Defendant, A. R. Thomas, by and through his attorney, R. Macey Taylor, and hereby presents to the Court his motion to dismiss the complaint filed herein and each paragraph thereof separately and severally and as grounds therefor assign the following separately and severally:

1. The Complaint fails to state a cause of action for which relief may be granted.

2. The Complaint is vague and uncertain.

3. The Complaint does not apprise the Defendant, with sufficient clarity of the charge he is called upon to defend.

4. The action is capricious.

5. Plaintiff's allegation that the Defendant breached a statutory duty is but a conclusion of the Plaintiff.

6. For aught that appears in the Complaint, the Defendant has in every respect discharged the duty imposed upon him by the provisions of 45 USC Section 151, 152, et seq.

7. The Complaint fails to allege any facts which constitute a breach of any statutory duty imposed on the Defendant.

8. For aught that appears in the Complaint, the Plaintiff has failed to discharge the duty imposed upon the Plaintiff by the provisions of 45 USC Section 151, 152, et seq.

9. It affirmatively appears from the Complaint that the plaintiff has failed to discharge the statutory duty imposed upon it by the provisions of 45 USC 151, 152 and 156.

10. The allegation that the Defendant conspired to and in combination did willfully and maliciously procure a breach of an agreement is a mere conclusion of the pleader and is not supported by any factual averment.

11. There are no facts alleged in the Complaint which disclose any duty of the Defendant to the Plaintiff, the breach of which would render the Defendant liable to the Plaintiff.

12. There are no facts alleged in the Complaint alleging a breach of any duty owed by the Defendant to the Plaintiff.

13. The Complaint fails to allege that the Defendant combined for the accomplishment of an unlawful purpose.

14. The Complaint fails to allege that the Defendant combined for the purpose of accomplishing a purpose, not in itself unlawful, by unlawful means.

15. The Complaint fails to contain allegation of facts justifying a legal conclusion of unlawful conspiracy.

16. The Complaint fails to accurately describe the alleged illegal purpose or means which the alleged conspirators meant to accomplish or resort to.

17. It appears from the allegations contained in the Complaint that the Plaintiff has an adequate remedy under the Railway Labor Act, Title 45 USC Section 153 et seq.

18. For aught that appears in the Complaint, the National Railroad Adjustment Board has exclusive jurisdiction over the dispute alleged to exist by the Plaintiff.

19. It affirmatively appears from the Complaint that the Plaintiff has not exhausted its administrative remedies.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for A. R. Thomas.

Certificate of Service.

I certify that I have this 17th day of November, 1955, served a copy of the foregoing Motion on Robert McDavid Smith, Esq., one of the attorneys for the Plaintiff, by delivering a copy to his office.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for A. R. Thomas.

ORDER ON MOTIONS TO DISMISS.

(Title Omitted.)

Defendants' separate and several motions to dismiss the complaint, as amended, came on for hearing on December 9, 1955. Oral arguments were made at that time, and the Court has since received and carefully considered briefs supporting and in opposition to defendants' said motions.

Under Count One of the complaint, as amended, plaintiff avers that the "defendants are its employees" and are subject to the duties imposed by the provisions of 45 U.S.C.A., Section 151 et seq.; that the defendants have breached said statutory duty in that "they willfully refused to exert any effort to settle an existing dispute" but, on the contrary, willfully and maliciously caused a shutdown or work stoppage on plaintiff's railway lines.

Under Count Two, plaintiff avers that prior to October 23, 1955, "it had entered into an agreement con-

erning wages, hours, working conditions, and other matters relating to conditions of employment of certain of its employees, among whom were the defendants, with a labor organization." Plaintiff further avers that, "according to the provisions of said agreement, all grievances or disputes were to be settled in a specified manner consistent with the Railway Labor Act"; that the defendants conspired and did "willfully and maliciously cause or procure a breach of the agreement between the plaintiff and said labor organization, in that the defendants did, on the occasion of the dispute or grievance within the scope of said agreement, fail and refuse to follow the procedure specified therein," and did willfully and maliciously cause a work stoppage on plaintiff's railway lines.

Under Count Three of the complaint, as amended, plaintiff avers that the defendants entered into a conspiracy for the purpose of hindering or delaying and preventing plaintiff from carrying on its lawful business as a common carrier.

The only relief sought is the recovery of damages.

Following a review of the numerous authorities, and after due consideration, the Court is of the opinion that the defendants' separate and several motions to dismiss are well taken as to Counts One and Two. The Court's conclusion in this respect appears to be clearly sustained by Slocum v. Delaware L. & W. R. Co., 339 U.S. 239, 70 S. Ct. 577; Brotherhood of Locomotive Firemen and Enginemen v. Central of Ga. Ry. Co., 5 Cir., 1962, 190 F. 2d 384; Alabaugh v. Baltimore & Ohio R. Co. and Brotherhood of Loco-

motive Engineers, 4 Cir., 1955, 222 F. 2d 861; Thompson v. St. Louis-San Francisco Ry. Co., N.D.Ala. S.D., Lyne, 1953, 113 F. Supp. 900; and Davis v. Southern Ry Co., 256 Ala. 202, 54 So. 2d 306.

The invocation of a statutory duty or the seeking of equitable relief does not take the case out of the Railway Labor Act, Alabaugh v. Baltimore & Ohio R. Co. and Brotherhood of Locomotive Engineers, supra, nor does the fact that damages only are sought. Davis v. Southern Ry. Co., supra. In the latter case the Supreme Court of Alabama very aptly observed:

". . . The appellant in this case while seeking damages only is still in the employment of the railroad and before damages can be awarded to him the existing bargaining agreement governing the class to which appellant belongs must be interpreted" (p. 205.)

In Brotherhood of Locomotive Firemen and Enginemen v. Central of Georgia Ry. Co., supra, a decree was sought enjoining appellees from a further violation of the Railway Labor Act, 45 U.S.C.A., Section 151 et seq. In denying relief, the Court, in an opinion by Circuit Judge Holmes, concluded:

"Only after the Adjustment Board has acted can it definitely appear that relief by the Courts is necessary to insure compliance with the statute. Order of Conductors v. Pitney, 326 U.S. 561, 66 S. Ct. 322, 90 L. Ed. 318"

The averments of Count Three are meager but, in the Court's opinion, state a cause of action under

the Alabama statute and the common law In the present posture of the case the motion to dismiss should be overruled as to Count Three.

It is, therefore, Ordered, Adjudged and Decreed as follows:

That the defendants' separate and several motions to dismiss addressed to Counts One and Two of the complaint, as amended, be and same are hereby granted and said counts be and same hereby are dismissed, without prejudice, however, to any proceedings before the Railway Adjustment Board or proceedings seeking appropriate relief by the Courts following review by that Board.

It is further Ordered, Adjudged and Decreed that the defendants' separate and several motions to dismiss addressed to Count Three of the complaint, as amended, be and they are hereby overruled.

Done and ordered, this the 30 day of December, 1955.

H. H. GROOMS,
Judge.

MOTION FOR JUDGMENT ON THE PLEADINGS.

Filed January 4, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr., J. B. Otts, Jr., T. A. Kennedy, H. K. Parker, J. M. Weldon, H.

E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin, separately and severally, by their attorneys and hereby move the Court under Rule 12 and other applicable rules of the Federal Rules of Civil Procedure to enter judgment on the pleadings for said defendants and against plaintiff dismissing said complaint, as amended, for lack of jurisdiction

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
FRANK O. BURGE, JR.,
(Frank O. Burge, Jr.),
Attorneys for Defendants,
J. M. Brown, Jr., J. B. Otts, Jr., T. A. Kennedy, H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin.

Of Counsel:
JACKSON, RIVES, PETTUS & PETERSON.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 4 day of January, 1968.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 4 day of January, 1956

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

ANSWER AND DEFENSE.

Filed January 4, 1956.

(Title Omitted.)

Come J. M. Brown, Jr., J. B. Otts, Jr., T. A. Kennedy, H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin, separately and severally, defendants in the above styled cause by their attorneys and for answer and defense to the complaint as amended set down the following, separately and severally, to-wit:

First Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted.

Second Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted for that said complaint fails to allege prior resort to and exhaustion of its administrative remedy by plaintiff.

Third Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted for that said complaint fails to allege that plaintiff has made prior resort to the National Railroad Adjustment Board.

Fourth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, plaintiff was a railroad carrier and the defendants were employees of said plaintiff carrier subject to the Railway Labor Act and defendants aver that the dispute or controversy as alleged in the complaint, as amended, between plaintiff carrier and its employees, defendants herein, is within the primary exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act and that this Court has no jurisdiction of said dispute or controversy until plaintiff has exhausted its remedy before said National Railroad Adjustment Board.

Fifth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, defendants were employees of plaintiff carrier subject to the Railway Labor Act

under a collective bargaining agreement, a copy of which is hereto attached and marked Exhibit A and made a part hereof as if fully set forth herein; and defendants aver that on or about, to-wit, October 23, 1955, a shut down or work stoppage occurred on plaintiff carrier's lines in Jefferson County, Alabama, as a spontaneous demonstration by about 2500 employees of said plaintiff carrier and defendants aver, upon information and belief, that such demonstration indicated disapproval of an order published by plaintiff a few days prior thereto abolishing the jobs of hostler helpers in plaintiff's Boyles Yard at Birmingham, Alabama, contrary to the provisions of said collective bargaining agreement and contrary to the provisions of the Railway Labor Act, as amended; and defendants aver that the dispute or controversy between plaintiff and defendants is within the primary exclusive jurisdiction of the National Railroad Adjustment Board and this Court has no jurisdiction thereof until plaintiff has exhausted said administrative remedy.

Sixth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, defendants were employees of plaintiff subject to the Railway Labor Act under a collective bargaining agreement, a copy of which is attached hereto as Exhibit A; and defendants aver that on or about, to-wit, October 23, 1955, a shut down or work stoppage occurred on plaintiff's lines (which is the same as the shut down or work stoppage referred to in dismissed Counts One and Two) as a spontaneous demonstration against plaintiff's abolition of certain hostler helper jobs at Birmingham,

Alabama, and defendants deny, separately and severally, any participation in causing said work stoppage which defendants are informed was a spontaneous protest against arbitrary unilateral action of plaintiff carrier in abolishing the craft of hostler helpers in Birmingham contrary to the provisions of said collective bargainng agreement and the provsions of the Railway Labor Act, as amended, and defendants aver that this matter is within the exclusive primary jurisdiction of the National Railroad Adjustment Board.

Seventh Defense.

Defendants aver that at all times alleged in the complaint, as amended, defendants were employees of plaintiff which is a common carrier engaged in interstate commerce subject to the Railway Labor Act and defendants aver that the Court has no jurisdiction of this cause for that plaintiff has failed to exhaust its administrative remedy before the National Railroad Adjustment Board under the Railway Labor Act and defendants, separately and severally, deny each and every allegation of the complaint, as amended, not expressly admitted in this defense.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
FRANK O. BURGE, JR.,
Attorneys for Defendants, J. M. Brown, Jr., J. B. Otts, Jr., T. A. Kennedy, H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin.

Of Counsel:
JACKSON, RIVES, PETTUS &
PETERSON.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson, & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 4th day of January, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 4th day of January, 1956

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

MOTION FOR JUDGMENT ON THE PLEADINGS.

Filed Jan. 6, 1956.

(Title Omitted.)

Come the Defendants, H. M. Baum, A. R. Thomas and R. H. Letchman, separately and severally, by their attorney, R. Macey Taylor, and hereby move the Court under Rule 12, Federal Rules of Civil Procedure, to enter judgment on the pleadings for said Defendants and against Plaintiff, and as grounds therefor assign the following:

1. It affirmatively appears from the pleadings in this cause that the Court is without jurisdiction to adjudicate the claim stated in the Complaint, as amended.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for Defendants,
H. M. Baum, A. R.
Thomas and R. H. Letchman.

Certificate of Service.

I, R. Macey Taylor, certify that I have served a copy of the foregoing motion on Robert McDavid Smith, Esq., one of the attorneys for the Plaintiff, by delivering a copy of same to his office on the 5th day of January, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for said Defendants.

I, R. Macey Taylor, certify that I have served a copy of the foregoing motion on Erle Pettus, Jr., Esq., Massey Building, Birmingham, Alabama, as attorney for Defendant J. M. Brown, Jr., et al., on this 5th day of January, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for said Defendants.

ANSWER.

Filed Jan. 6, 1956.

(Title Omitted.)

Now come the Defendants, H. M. Baum, A. R. Thomas and R. H. Letchman, and for Answer to the Complaint, as amended, filed herein, separately and severally, show unto the Court the following as Answer to Count 3 of said Complaint, Counts 1 and 2 having heretofore been dismissed by this Honorable Court.

1. The Defendants admit that they are citizens of Jefferson County, Alabama, and that the Plaintiff is a corporation organized and existing under the laws in the State of Kentucky and a resident citizen of said state; that the Plaintiff is engaged as a common carrier by rail of Interstate Commerce in and through the Northern District of Alabama.

2. The Defendants, separately and severally, deny each and every allegation contained in Count 3 of the

Complaint, as amended, except those which are expressly admitted in this their answer.

3. The Defendants, separately and severally, deny that they or any of them, at the time and place alleged in Count 3 of the Complaint, as amended, entered into a conspiracy or combination for the purpose of hindering, delaying, and preventing the Plaintiff from carrying on its lawful business.

4. The Defendants, separately and severally, deny that at the time and place alleged in Count 3 of the Complaint, as amended, they caused a shutdown or work stoppage of the Plaintiff's railroad lines.

5. Defendants deny that the Plaintiff has suffered any damages as a proximate consequence of any act alleged to have been done by the Defendants at the time and place alleged in Count 3 of the Complaint, as amended.

6. The Complaint, as amended, fails to State a claim upon which relief can be granted.

Affirmative Defenses.

Having answered each and every material allegation which remains in the Complaint, as amended, filed by the Plaintiff in this cause, the Defendants, separately and severally, hereby show unto the Court the following affirmative defenses:

7. Defendants, separately and severally, allege that on October 23, 1958, the Defendants were employees of the L. & N. Railroad Company, the Plain-

tiff in this cause. The Defendants, separately and severally, further allege that each of them continued to be employees of the Plaintiff continuously from October 22, 1955, up to the date of the filing of this Answer; that the Defendants, separately and severally, are now employees of the Plaintiff and will continue to be employees of the Plaintiff. Defendants, separately and severally, further allege that on or about October 22, 1955, the Plaintiff breached the Collective Bargaining Agreement which was then in force between the Plaintiff and its employees by abolishing a Craft of workers without giving the notice required by said Collective Bargaining Agreement and by 45 U.S.C. 151 et seq. The aforesaid Collective Bargaining Agreement has been attached to the Answer filed by the other Defendants in this cause and its provisions are incorporated herein, by reference, as if set out completely. The Defendants, separately and severally, allege that on or about October 22, 1955, approximately 2500 employees of the Plaintiff, spontaneously and without coercion or direction failed to report to their assigned duties as a protest of the Plaintiff's unjustified breach of the Collective Bargaining Agreement as aforesaid. Defendants allege that the aforesaid dispute between the Plaintiff and the Defendants, who are employees of the Plaintiff, is subject to the exclusive primary jurisdiction of the National Railroad Adjustment Board.

8. Defendants separately and severally, say as a defense to the claim made by the Plaintiff in Count 2, as amended, that during the period October 22, 1955, to October 28, 1955, during which period of time the Defendants are informed a work stoppage existed

at the Boyles Shop of the Plaintiff, that neither of them entered into any conspiracy or confederation or combination with any person named as a Defendant or any other person; that during said period of time the Defendants committed no illegal acts, did not threaten, coerce, or intimidate any person, did not persuade, induce, or otherwise prevent any employee of the Plaintiff from performing his assigned duties.

9. Defendants, separately and severally, say that during the period of the work stoppage which occurred at the Boyles Shop of the Plaintiff during the period of [illegible] October [illegible], [illegible], to October [illegible], [illegible], the Defendants and each of them reported to the Boyles Shop of the Plaintiff at the time their respective shifts were scheduled to commence work. Defendants further allege that on each of the said occasions, they found the Boyles Shop of the Plaintiff closed and shutdown with no employees working and with no officials of the Plaintiff working and that at said time and place there was no work available for the Defendants to perform. Defendants further allege that they did not participate in any work stoppage except to the extent of individually deciding not to enter the Boyles Shop of the Plaintiff when it was apparent that no work was being performed and that no employees of the Plaintiff were working.

10. Defendants, separately and severally, allege that the work stoppage referred to in Count 3 of the Complaint, as amended, is the same dispute or grievance referred to in Count 1 and 2 of the Complaint, as amended, which have been dismissed by previous order of this Court; that said dispute between the Plaintiff and its employees is governed by

the provisions of the Railway Labor Act; that the Court is without jurisdiction until the Plaintiff has exhausted its administrative remedy.

11. Defendants allege that this Court does not have jurisdiction to adjudicate the claim stated by the Plaintiff in Count 3 of the Complaint, as amended, for that it affirmatively appears that the said claim is governed by the provisions of the Railway Labor Act and pursuant to the provision of said act, Plaintiff is required to seek administrative relief before invoking the jurisdiction of the Court and that the Plaintiff has failed to obtain administrative determination of the claim stated in Count 3 of the Complaint, as amended.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for Defendants,
H. M. Baum, A. R.
Thomas and R. H.
Letchman.

Certificate of Service.

I, R. Macey Taylor, certify that I have served a copy of the foregoing Answer on Robert McDavid Smith, Esq., one of the attorneys for the Plaintiff, by delivering a copy of same to his office on the 9th day of January, 1958.

R. MACEY TAYLOR,
(R. Macey Taylor).

I, R. Macey Taylor, certify that I have served a copy of the foregoing motion on Erle Pettus, Jr., Esq., Massey Building, Birmingham, Alabama, as attorney

for Defendant J. M. Brown, Jr., et al., on this 5th day of January, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

REQUEST FOR ADMISSIONS.

Filed January 6, 1956.

(Title Omitted.)

Now come the Defendants, H. M. Baum, A. R. Thomas and R. H. Letchman, by and through their attorney, R. Macey Taylor, and pursuant to the provisions of Rule 36, Rules of Civil Procedure, request the Plaintiff within 10 days after service of this request, to make the following Admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

1. That each of the following statements is true.

a. H. M. Baum, A. R. Thomas and R. H. Letchman were employees of the Plaintiff on October 22, 1955.

b. H. M. Baum, A. R. Thomas and R. H. Letchman have been continuously employed by Plaintiff from October 22, 1955, to the date hereof and are now employed by the Plaintiff.

c. All of the persons whose names appear in the Complaint, as amended, as Defendants in this cause

were employees of the Plaintiffs on October 23, 1955; have been since October 23, 1955, continuously employed by the Plaintiff and are now employees of the Plaintiff.

d. At all times referred to in the Complaint, as amended, the Plaintiff was, and is now, an interstate railroad carrier.

e. The allegations of Count 3 of the Complaint as amended, in words and figures as follows:

"* * * in that they did willfully and maliciously and without excuse cause a shut-down or work stoppage of the plaintiff's railroad lines resulting in a complete paralysis of the operation of the plaintiff as a common carrier of interstate commerce in Jefferson County, Alabama, * * *."

refers to the same defendants, the same time, place and circumstances and the same acts allegedly performed by said defendants as the allegations in Counts 1 and 2 of the Complaint, as amended, which allege that:

"* * *the defendants* * *did* * * willfully and maliciously cause a shut-down or work stoppage on the lines of the plaintiff in Jefferson County, Alabama, resulting in a complete paralysis of the operations of the plaintiff as a common carrier of interstate commerce in Jefferson County Alabama * * *."

f. The work stoppage referred to in Count 3 of the Complaint, as amended, is the same work stoppage

referred to in Counts 1 and 2 of the Complaint, as amended.

g. The collective bargaining agreement referred to in Count 2 of the Complaint, as amended, which provides for the conditions of employment of the persons named as defendants in Count 3 of the Complaint, as amended, was in force and effect at all times referred to, and involved in Count 3 of the Complaint, as amended, and said collective bargaining agreement provides for the conditions of employment of the persons named as defendants in Count 3 of the Complaint, as amended.

h. The acts of the persons named as defendants in Count 2 of the Complaint, as amended, which are alleged to constitute a breach of the collective bargaining agreement in force between the Plaintiff and certain of its employees among whom are the persons named as defendants in all counts of the Complaint, as amended, are the same acts allegedly performed by the persons named as defendants in Count 3 of the Complaint, as amended, and relied on by the plaintiff for its claim which is stated in Count 3 of the Complaint, as amended.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for Defendants, H. M. Brown, A. R. Thomas and R. H. Letchman.

Certificate of Service.

I, R. Macey Taylor, certify that I have served a copy of the foregoing Request for Admissions on Robert McDavid Smith, Esq., one of the attorneys for the Plaintiff, by delivering a copy of same to his office on the 5th day of January, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for said Defendants.

I, R. Macey Taylor, certify that I have served a copy of the foregoing Request for Admissions on Eric Pettus, Jr., Esq., Massey Building, Birmingham, Alabama, as attorney for Defendant J. M. Brown, Jr., et al., on this 5th day of January, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for said Defendants.

RESPONSE TO REQUEST FOR ADMISSIONS.

Filed Jan. 18, 1956.

(Title Omitted.)

Now comes the plaintiff, by and through its attorney, and responds to the request for admissions heretofore filed by defendants Baum, Thomas and Letchman as follows:

[redacted]

[redacted]

[redacted]

Doyle counsel for the parties making such request by delivering a copy of the same to his office in the Frank Nelson Building on the 17th day of January, 1958.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I certify that I have served a copy of the foregoing response to request for admissions on Hon. Erle Pettus, Jr., counsel for all other defendants by mailing a copy of the same to his office in the Massey Building on the 17th day of January, 1958.

ROBERT McD. SMITH,
Attorney for Plaintiff.

ORDER ON PRE-TRIAL HEARING.

(Title Omitted.)

This cause coming on to be heard on a regular pre-trial hearing, and all parties being present in person or by counsel, the following action was thereupon taken:

1. The following pleadings and amendments were allowed:

Complaint and Answer.

2. It was agreed by all of the parties that the following are all of the issues in controversy in this cause:

Under Count Three of the complaint, plaintiff claims of defendants $250,000.00 as damages, averring that the defendants did conspire or combine for the purpose of hindering, delaying and preventing the plaintiff from carrying on its lawful business as a common carrier, and that the defendants did willfully and maliciously, and without excuse cause a shut-down of plaintiff's railroad lines, proximately resulting in the damages claimed.

For answers to the complaint, the defendants and each of them plead the general issue.

The defendants have filed a motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure. Matters outside the pleadings have been presented to the Court, and the Court will consider said motion as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. After hearing oral arguments of counsel, this motion is taken under submission for further consideration by the Court. If said motion is overruled, the plaintiff will be given an opportunity to recast its complaint charging a wrongful interference with the plaintiff business, in which case the defendants will be afforded an opportunity to file responsive pleadings thereto.

It is therefore Ordered by the Court that all of the above-named allowances and agreements be, and the same are hereby binding upon all parties in the above styled cause, unless this order be hereafter modified by order of the Court.

Done this 1st day of February, 1956.
H. H. GROOMS,
United States District Judge.

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

(Title Omitted.)

Upon the pre-trial of this cause on February 1, 1956, the Court took under advisement the defendants' motion for summary judgment (originally filed as one for judgment on the pleadings) under Rule 56. After consideration of the pleadings in the cause, movants' exhibits 1 and 2 in support of said motion, plaintiff's exhibits 1 through 8 in opposition thereto, and of the oral arguments and briefs, the Court is of the opinion that said motion for summary judgment should be overruled. Russell v. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C.I.O., 258 Ala. 615, 64 So. 2d 384, and United Construction Workers v. Laburnum Construction Company, 347 U. S. 656.

It is, therefore, Ordered, Adjudged and Decreed that the defendants' motion for a summary judgment be and the same is hereby overruled.

Done and ordered this 6 day of February, 1956.
H. H. GROOMS,
Judge.

MOTION TO RECONSIDER AND SET ASIDE ORDER OF COURT DENYING MOTION FOR SUMMARY JUDGMENT FOR DEFENDANTS AND TO ENTER AN ORDER FOR SUMMARY JUDGMENT FOR DEFENDANTS.

Filed Feb. 8, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr. J. B. Otts, Jr., T. A. Kennedy, H. D. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall, and R. A. Sutterlin, separately and severally, by their attorneys and hereby move the Court to reconsider and set aside the order of the Court dated February 6, 1956, denying defendants' motion for summary judgment for lack of jurisdiction and to enter a summary judgment for defendants dismissing the complaint for lack of jurisdiction.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
FRANK O. BURGE, JR.,
(Frank O. Burge, Jr.),
Attorneys for Defendants,
J. M. Brown, Jr., J. B. Otts, Jr., T. A. Kennedy, H. D. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin.

JACKSON, RIVES, PETTUS & PETERSON,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 8th day of February, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 8th day of February, 1956

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

ORDER ON MOTION TO RECONSIDER AND TO SET ASIDE ORDER DENYING MOTION FOR SUMMARY JUDGMENT, ETC.

(Title Omitted.)

This cause, coming on to be heard, was submitted to the Court on the motion of certain defendants to reconsider and to set aside the order of the Court denying the motion for summary judgment for the defendants and to enter a summary judgment for the defendants, and on the motions of certain of the defendant for production of documents, to require more complete answers to interrogatories, and to protect the defendants from annoyance, embarrassment or oppression in the taking of depositions.

During the oral argument of counsel on the defendants' motion to set aside the order denying their motion for summary judgment, it appeared to the Court that the Court's prior ruling denying the defendants' motion to dismiss as directed to Count Three of the complaint, as amended, was laid in error. After due consideration thereof, the Court is now of the opinion that Count Three is defective and that it should sustain the motion to dismiss as to Count Three and pass the other outstanding motions pending an amendment to the complaint and the refiling of motions to dismiss the complaint, as last amended.

It is, therefore, Ordered, Adjudged and Decreed by the Court that the decree of this Court heretofore entered on the 30 day of December, 1955, be and the same is hereby modified and amended in the following particulars: in that the defendants' respective

motion to dismiss the complaint be and the same are hereby granted as to Count Three of said complaint, as amended, and said Count Three is hereby dismissed. The plaintiff is hereby allowed 10 days from the date hereof within which to amend its complaint if it so desires.

The other outstanding motions in this cause be and the same hereby are continued to the next motion docket of the undersigned judge.

Done and Ordered, this 24 day of February, 1956.

H. H. GROOMS.

AMENDMENT TO COMPLAINT.

Filed Mar. 5, 1956.

(Title Omitted.)

Comes the plaintiff in the above styled cause and amends its complaint by striking Count Three thereof and substituting therefor the following:

Amended Count Three.

Plaintiff avers that on, to-wit, October 23, 1955 it was engaged in a lawful business, to-wit, that of a common carrier by rail in interstate commerce, and that on or about said date the defendants, being employees of plaintiff, did conspire or combine to interfere with plaintiff's said business and pursuant to said conspiracy or combination did intentionally and without

just cause interfere with and prevent plaintiff from carrying on said business in that they caused other employees of plaintiff, by means of intimidation or threat of force or violence, not to perform their duties with plaintiff and did thereby cause a substantially total cessation of plaintiff's operation in Jefferson, Morgan and Montgomery Counties and other places on its lines in the State of Alabama and as a proximate consequence thereof plaintiff was injured and damaged in the amount of $250,000.00 which plaintiff claims of defendants as damages in this cause.

GIBSON & GIBSON,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

H. G. BREETZ,
JAMES A. SIMPSON,
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing Amendment to Complaint has this day been delivered to Hon. Clifford Fulford, attorney for defendant T. A. Kennedy, at his office in the Frank Nelson Building, Birmingham, Alabama this 3rd day of March, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing Amendment to Complaint has this day been delivered to Hon.

R. Macey Taylor, attorney for defendants Baum, Thomas and Letchman, at his office in the Frank Nelson Building, Birmingham, Alabama this 3rd day of March, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing Amendment to Complaint has this day been delivered to Hon. Erle Pettus, in the Massey Building, Birmingham, Alabama this 3rd day of March, 1956.

ROBERT McD. SMITH.
Attorney for Plaintiff.

AMENDED ANSWER.

Filed March 5, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin, by the attorneys and hereby re-assign all motions, responsive pleadings, answers and defenses heretofore assigned to the complaint and each count thereof to amend count three.

In addition to the foregoing, defendants add thereto the following answer and defense, separately and severally, to-wit:

Eighth Defense.

Said count fails to state a claim upon which relief can be granted on the following grounds, separately and severally, to-wit:

(a) Said count fails to allege an exhaustion of administrative remedies before the National Railroad Labor Board (NRLB).

(b) Said count fails to allege that there is an existing "no strike" provision construed by the NRLB to be such.

(c) Said count fails to charge that the defendants of action declared on is a labor dispute within the primary exclusive jurisdiction of the NRLB under the Railway Labor Act.

(d) Said count shows affirmatively that the defendant employees of plaintiff have the legal right intentionally to interfere with plaintiff's business by a strike or work stoppage and there are no allegations in said count negativing the exercise of such right.

(e) Said count fails to charge that the defendants or any two or more of the defendants entered into any illegal conspiracy against plaintiff.

(f) Said count fails to charge any actionable wrong against the defendants individually or collectively.

(g) Said count fails to charge any individual defendant with the commission of any actionable wrong.

(h) Said count fails to charge the defendants collectively with the commission of any actionable wrong.

(i) Said count fails to charge two or more of the defendants with an actionable conspiracy.

(j) Said count fails to state a cause of action in tort or in contract against the defendants or any of the defendants.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
FRANK O. BURGE, JR.,
(Frank O. Burge, Jr.),
Attorneys for Defendants,
J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin.

JACKSON, RIVES, PETTUS & PETERSON,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 5th day of March, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 5th day of March, 1956

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Clifford Fulford, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendant, T. A. Kennedy.

This 5th day of March, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

REASSIGNMENT OF MOTION, RESPONSES AND DEFENSES.

Filed March 7, 1956.

(Title Omitted.)

The defendant, T. A. Kennedy, by and through his attorneys, reassigns to Amended Count Three of the Complaint, the motions, responses and defenses, separately and severally, heretofore filed and assigned in his behalf to the Complaint and the Counts thereof in this cause.

LEVINE & FULFORD,
By R. CLIFFORD FULFORD,
(R. Clifford Fulford),
Attorneys for the Defendant, T. A. Kennedy.

Certificate of Service.

I hereby certify that a copy of the above and foregoing pleading has been mailed postage prepaid, to Hon. Robert McD. Smith, Lange, Simpson, Robinson & Somerville, 10th floor, Frank Nelson Building, Birmingham, Alabama, and Hon. White Gibson, Jr., Gibson & Gibson, Comer Building, Birmingham, Alabama, of counsel for plaintiff; to Hon. Erle Pettus, Jr., Jackson, Rives, Pettus & Peterson, Massey Building, Birmingham, Alabama, attorneys for certain of the defendants for whom they appear; and to Hon. R. Macey Taylor, Frank Nelson Building, Birmingham, Alabama, attorney for the defendants Baum, Thomas and Letchman.

This the 5th day of March, 1956.

R. CLIFFORD FULFORD,
(R. Clifford Fulford),
Of counsel for the Defendant, T. A. Kennedy.

MOTION TO DISMISS THE COMPLAINT AS LAST AMENDED.

Filed March 8, 1956.

(Title Omitted.)

Now come the Defendants H. M. Baum, A. R. Thomas and R. H. Letchman by and through their attorney, R. Macey Taylor, and hereby re-file and re-assign separately and severally each and every ground in the Motion to Dismiss, heretofore filed by said Defendants, to the Complaint as last amended and in addition thereto assign the following grounds separately and severally:

20. The Complaint, as last amended, fails to allege the existence of a conspiracy.

21. The Complaint, as last amended, fails to allege that the defendants or any of them entered into an unlawful agreement.

22. The Complaint, as last amended, fails to allege that the Defendants or any of them agreed to commit an unlawful act in furtherance of an agreement to accomplish a lawful objective.

23. The allegations of the Complaint, as last amended, are merely conclusions of law.

24. The allegation in the Complaint, as last amended, of "intimidation or threats of force or violence" are mere conclusions of the pleader.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for H. M. Baum,
A. R. Thomas and R. H.
Letchman.

Certificate of Service.

I, R. Macey Taylor, hereby certify that a copy of the foregoing has been served on Robert McDavis Smith, attorney for the Plaintiff, by delivering a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

Certificate of Service.

I, R. Macey Taylor, hereby certify that a copy of the foregoing has been served on Erle Pettus, Jr., by delivering a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

Certificate of Service.

I, R. Macey Taylor, certify that a copy of the foregoing has been served on R. Clifford Fulford, attorney for T. A. Kennedy, by delivering a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO THE COMPLAINT AS LAST AMENDED.

Filed March 8, 1956.

(Title Omitted.)

Now come the Defendants H. M. Baum, A. R. Thomas and R. H. Letchman, by and through their attorney, R. Macey Taylor, and for answer to the complaint as last amended, hereby submit the following:

Said Defendants hereby re-file the answer and affirmative defenses heretofore filed in this cause to the complaint as last amended.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for H. M. Baum,
A. R. Thomas and R. H.
Letchman.

Certificate of Service.

I, R. Macey Taylor, hereby certify that a copy of the foregoing has been served on Robert McDavid Smith, attorney for the Plaintiff, by deliveiing a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

I, R. Macey Taylor, hereby certify that a copy of the foregoing has been served on Erle Pettus, Jr. by delivering a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

I, R. Macey Taylor, certify that a copy of the foregoing has been served on R. Clifford Fulford, attorney for T. A. Kennedy, by delivering a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

INTERROGATORIES TO PLAINTIFF.

Mar. 12, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, C. L. McCutcheon, W. L. Grissom, J. M. Weldon, H. E. Southerland, M. L. Hall and R. A. Sutterlin, and, pursuant to the Federal Rules of Civil Procedure, herewith propound to the plaintiff the following interrogatories:

1. State fully and in detail with respect to the defendant, J. M. Brown, Jr.:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to

have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

2. (a) State whether or not the defendant, J. M. Brown, Jr., did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

3. (a) Did the said defendant, J. M. Brown, Jr. personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

4. State fully and in detail with respect to the defendant, J. B. Otts, Jr.:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all

persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threat made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

5. (a) State whether or not the defendant, J. B. Otts, Jr., did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant, (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

6. (a) Did the said defendant, J. B. Otts, Jr., personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the

name of the person or identity of the property involved in each said alleged act of violence as participated in or committed by the said defendant.

7. State fully and in detail with respect to the defendant, H. K. Parker:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee o the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or

violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The names and addresses of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

2. (a) State whether or not the defendant, H. K. Parker, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said con-

spiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

9. (a) Did the said defendant, H. K. Parker personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

10. State fully and in detail with respect to the defendant, C. L. McCutcheon:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place

[redacted]

(c) [redacted]

(d) [redacted]

(1) [redacted]

(2) [redacted]

(3) [redacted]

(4) [redacted]

(5) [redacted]

(6) [redacted]

(7) [redacted]

(8) [redacted]

(9) [redacted]

(10) [redacted]

(11) [redacted]

(12) [redacted]

(13) [redacted]

(14) [redacted]

(15) [redacted]

(16) [redacted]

(17) [redacted]

(18) [redacted]

(19) [redacted]

(20) [redacted]

[illegible] (a) State whether or not the defendant, C. L. [illegible], did conspire with other defendants [illegible] pursuant to the conspiracy mentioned in the [illegible] complaint.

(b) If so, then state with reference to the alleged [illegible] the following: (1) The time, place and [illegible] conspiracy is alleged to have been entered [illegible] the said defendant. (2) The names and ad[illegible] of each person present at the time said con[illegible] was entered into by the defendant. (3) The [illegible] and/or acts by which said defendant indicated [illegible] with the other alleged conspirators to form [illegible] conspiracy. (4) The purpose of the said con[illegible]. (5) All material agreements pertaining to [illegible] entered into by the said defendant and [illegible] alleged conspirators. (6) Every word and [illegible] and any other means employed by the defendant [illegible] furtherance of the alleged conspiracy.

[illegible] (a) Did the said defendant, C. L. McCutcheon, [illegible] participate in or commit any act of vio[illegible] in connection with "total cessation of plain[illegible]'s operation" as alleged in the amended com[illegible].

(b) If so, then state the time, date and place and [illegible] names and addresses of persons present, and the [illegible] of the person or identity of the property in[illegible] in each said alleged act of violence so par[illegible] in or committed by the said defendant.

13. State fully and in detail with respect to the defendant, W. L. Grissom:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The names and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plain-

[illegible] as threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

14. (a) State whether or not the defendant, W. L. Grissom, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The names and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

15. (a) Did the said defendant, W. L. Grissom, personally participate in or commit any act of vio-

lence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

16. State fully and in detail with respect to the defendant, J. M. Weldon:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

17. (a) State whether or not the defendant, J. M. Weldon, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) the time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or

acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

18. (a) Did the said defendant, J. M. Weldon, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

19. State fully and in detail with respect to the defendant, H. E. Southerland:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by

the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

20. (a) State whether or not the defendant, H. E. Southerland, did conspire with other defendants and/or persons in the conspiracy contained in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The names and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

21. (a) Did the said defendant, H. E. Southerland, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

22. State fully and in detail with respect to the defendant, M. L. Hall:

(c) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The names and addresses of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of each alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(e) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following:

(1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

23. (a) State whether or not the defendant, M. L. Hall, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

24. (a) Did the said defendant, M. L. Hall, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

25. State fully and in detail with respect to the defendant, R. A. Sutterlin:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time,

date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

28. (a) State whether or not the defendant, R. A. Sutterlin, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date

said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

20. (a) Did the said defendant, R. A. Sutterlin, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

21. State fully and in detail with respect to the defendant, T. A. Kennedy:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so

used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened

each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

29. (a) State whether or not the defendant, T. A. Kennedy, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiray. (5) All material agreements pertaining to the conspiray entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

30. (a) Did the said defendant, T. A. Kennedy, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

31. State fully and in detail with respect to the defendant, H. M. Baum:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

1

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The names and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

2. (a) State whether or not the defendant, H. M. Bowman, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act

and any other means employed by the defendant in furtherance of the alleged conspiracy.

33. (a) Did the said defendant, H. M. Baum, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

34. State fully and in detail with respect to the defendant, R. H. Letchman:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The names and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of each alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty

[illegible] from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

[illegible]. (a) State whether or not the defendant, R. H. [illegible]man, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

36. (a) Did the said defendant, R. H. Letchman, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

37. State fully and in detail with respect to the defendant, W. C. Burnett:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all

persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (2) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

38. (a) State whether or not the defendant, W. C. Burnett, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

39. (a) Did the said defendant, W. C. Burnett, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property in-

volved in each said alleged act of violence so participated in or committed by the said defendant.

40. State fully and in detail with respect to the defendant, A. R. Thomas:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

41. (a) State whether or not the defendant, A. R. Thomas, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and

act and any other means employed by the defendant in furtherance of the alleged conspiracy.

2. (a) Did the said defendant, A. R. Thomas, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

ERLE PETTUS, JR.,
As Attorney for defendants
named on page 1.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 9th day of March, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon R. Macey Taylor, Esq.,

Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 9th day of March, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon R. Clifford Fulford, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendant, T. A. Kennedy.

This 9th day of March, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.

AMENDED INTERROGATORIES.

Filed March 22, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, C. L. McGutcheon, W. L. Grissom, J. M. Weldon, H. E. Southerland, M. L. Hall and R.

A. Sutterlin, and hereby amend the interrogatories to plaintiff hereto filed as follows:

Interrogatory 4 (b)

Amend Interrogatory 4. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures, "Interrogatory 4. (b) (1)".

Interrogatory 4. (d).

Amend Interrogatory 4. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 4. (d) (1)".

Interrogatory 7. (b).

Amend Interrogatory 7. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures, "Interrogatory 7. (b) (1)".

Interrogatory 7. (d).

Amend Interrogatory 7. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 7. (d) (1)".

Interrogatory 10. (b).

Amend Interrogatory 10. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)"

wherever same appear therein, the words and figures "Interrogatory 10. (b) (1)".

Interrogatory 10. (d).

Amend Interrogatory 10. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 10. (d) (1)".

Interrogatory 12. (b).

Amend Interrogatory 12. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 12. (b) (1)".

Interrogatory 12. (d).

Amend Interrogatory 12. (d) by substituting, in lieu of the words and figures "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 12. (d) (1)".

Interrogatory 16. (b).

Amend Interrogatory 16 (b) by substituting, in lieu of the words and figures "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 16. (b) (1)".

Interrogatory 16. (d).

Amend Interrogatory 16. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)"

wherever same appear therein, the words and figures "Interrogatory 18. (d) (1)".

Interrogatory 19. (b).

Amend Interrogatory 19. (b) by substituting, in lieu of the words and figures "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 19. (b) (1)".

Interrogatory 19. (d).

Amend Interrogatory 19. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 19. (d) (1)".

Interrogatory 22. (b).

Amend Interrogatory 22. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 22. (b) (1)".

Interrogatory 22. (d).

Amend Interrogatory 22. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 22. (d) (1)".

Interrogatory 25. (b).

Amend Interrogatory 25. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)"

wherever same appear therein, the words and figures "Interrogatory 25 (d) (1)".

"Interrogatory 25. (d) (1)".

Interrogatory 25. (d).

Amend Interrogatory 25. (d) by substituting, in lieu of the words and figures "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 25. (d) (1)".

Interrogatory 28. (b).

Amend Interrogatory 28. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 28. (b) (1)".

Interrogatory 28. (d).

Amend Interrogatory 28. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 28. (d) (1)".

Interrogatory 31. (b).

Amend Interrogatory 31. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 31. (b) (1)".

Interrogatory 31. (d).

Amend Interrogatory 31. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 31. (d) (1)".

Interrogatory 34. (b).

Amend Interrogatory 34. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures, "Interrogatory 34. (b) (1)".

Interrogatory 34. (d).

Amend Interrogatory 34. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 34. (d) (1)".

Interrogatory 37. (b).

Amend Interrogatory 37. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures, "Interrogatory 37. (b) (1)".

Interrogatory 37. (d).

Amend Interrogatory 37. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 37. (d) (1)".

Interrogatory 40. (b).

Amend Interrogatory 40. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 40. (b) (1)".

Interrogatory 40. (d).

Amend Interrogatory 40. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 40. (d) (1)".

JACKSON, RIVER, PETTUS & PETTUS,

By ERLE PETTUS, JR.,
Attorneys for Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon James A. Simpson, Esq. c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 21 day of March, 1955.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 21 day of March, 1966.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon R. Clifford Fulford, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendant, T. A. Kennedy.

This 21 day of March, 1966.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.
MARY L. (Illegible).

ORDER OVERRULING DEFENDANTS' MOTIONS TO DISMISS COUNT THREE OF COMPLAINT AS LAST AMENDED, ETC.

(Title Omitted.)

This matter coming on for a hearing upon the defendants' separate and several motions to dismiss Count Three of the complaint, as last amended, and upon the plaintiff's request for reconsideration of the Court's order of December [illegible], granting the defendants' motions to dismiss Count One; and upon due consideration thereof, the Court is of the opinion that said motions to dismiss as to Count Three of the complaint, as last amended, should be overruled; and that the plaintiff's request for reconsideration of the order of December [illegible], as it related to Count One should be denied.

It is, therefore, Ordered, Adjudged and Decreed:

(1) That the defendants' separate and several motions to dismiss Count three of the complaint, as last amended, be and the same are hereby separately and severally overruled; and

(2) That the plaintiff's request for reconsideration of the order of December [illegible], sustaining defendants' motions to dismiss Count One be and the same is hereby denied.

Done and Ordered, this 3 day of April, [illegible].

H. H. GROOMS,
Judge.

AMENDMENT TO ORDER OF APRIL 3, 1956.

(Title Omitted.)

Upon motion made by plaintiff in open Court the Court amends its order of April 3, 1956 to read as follows:

This matter coming on for a hearing upon the defendants' separate and several motions to dismiss Count Three of the complaint, as last amended, and upon the plaintiff's request for reconsideration of the Court's order of December 30, 1955, granting the defendants' motion to dismiss Count One; and upon due consideration thereof, the Court is of the opinion that said motions to dismiss as to Count Three of the complaint, as last amended, should be overruled and that the plaintiff's request for reconsideration of the order of December 30, 1955, as it related to Count One should be denied, the Court being of the opinion that the alleged causes of action relates to a controversy falling within the exclusive primary jurisdiction of the National Railroad Adjustment Board, under the authorities cited in the Court's order of December 30, 1955;

It is, therefore, Ordered, Adjudged and Decreed:

(1) That the defendants' separate and several motions to dismiss Count three of the complaint, as last amended, be and the same are hereby separately and severally overruled; and

(2) That the plaintiff's request for reconsideration of the order of December 30, 1955, sustaining de-

fendants' motions to dismiss Count One be and the same is hereby denied.

Done and Ordered, this 12 day of April, 1956.

H. H. GROOMS,
Judge.

PLAINTIFF'S ANSWERS TO DEFENDANTS' INTERROGATORIES.

Filed April 25, 1956.

(Title Omitted.)

Comes the plaintiff in the above styled cause and for answer to interrogatories heretofore propounded to it, says as follows:

1 (a) Yes, although plaintiff is not at this time informed as to each specific individual act of his.

1 (b) He was one of a group who caused other employees not to perform their duties for plaintiff by informing them that a strike was in effect, by directing them not to work, by posting and maintaining pickets and observers at and near the entrances to plaintiff's premises, some of whom displayed weapons, and by the use of threats of violence directly addressed to certain employees. The fact that during a strike in March, April and May, 1955, another in August, 1955, as well as at intervening times, numerous employees of plaintiff attempting to work had been assaulted and injured or threatened with death

or serious bodily harm by persons participating in the strikes, by the use of clubs, knives, firearms and other deadly weapons, and the fact that there had been widespread sabotage and vandalism by the use of fire, and dynamite, all of which had the effect of terrorizing plaintiff's employees and their families from working during a "strike" was commonly known to this defendant and those acting in conjunction with him at all times during the period which is the subject of this suit. All the words, acts and means employed by this defendant were spoken, done and used with knowledge that the effect of announcing said strike and of posting pickets and watchers would be to intimidate other employees not to perform their duties for plaintiff. At the present stage of its investigation of this case, which is still in progress, plaintiff is not fully and completely informed as to all the acts of this defendant in the matter inquired about.

1 (b) (1) The intimidation by the group, including this defendant, and their agents and abettors acting in their behalf prevented all or substantially all plaintiff's employees at Birmingham, Decatur, Cullman and Montgomery, Alabama, from performing any duties, and affected, to wit, more than two thousand employees, during the period from, to wit, 8:45 P.M. Sunday, October 23, 1955, to and including, to wit, 7:00 P.M., Wednesday, October 26, 1955.

1 (b) (2) Answered.

1 (b) (3) Answered.

1 (c) Plaintiff is not able to answer this interrogatory categorically at this time. Individually, person-

ally, and directly, this particular defendant is not known to have used any threats of force or violence. The means used by this defendant was that of participating in the act of calling a strike, in the course of which persons acting and meeting him and his co-conspirators ordered employees to leave and remain away from their work, using the fear and threat of violence created by previous intimidation, as well as direct threats and overt acts of violence.

1 (d) (1), (2) and (3). Answered.

2 (a) He did.

2 (b) (1) About 5:00 P.M., Sunday, October 23, 1955, at the home of defendant, H. K. (Shorty) Parker, 5024 41st Way North, Birmingham, Alabama. This was the principal meeting as to the conspiracy. Other meetings before and after this one, were held, at which various persons discussed the subject matter of the strike.

2 (b) (2).

H. E. Anderson, 4228 8th Ave., No., Birmingham, Ala.

Bruce Barnett, 4136 38th Ave., No., Birmingham, Ala.

H. M. Baum, 4501 11th Ave., No., Birmingham, Ala.

J. M. Brown, Jr, 124 South 69th Street, Birmingham, Ala.

F. M. Edwards, 338 9th Ave., No., Decatur, Alabama.

F. L. Fleming, 2415 12th Ave., No., Decatur, Ala.

W. L. Grissom, 5332 5th Terrace So., Birmingham, Ala.

M. L. Hall, 137 Springdale Rd., Birmingham, Ala.

T. A. Kennedy, 4156 51st Avenue North, Birmingham, Alabama.

R. H. Letchman, 1003 25th Street S.W., Birmingham, Alabama.

W. L. Logan, 4913 Avenue N (C.P), Birmingham, Alabama.

C. L. McCutcheon, 1009 Overton Avenue, Tarrant, Alabama.

J. B. Otts, Jr., 808 Jefferson Blvd., Tarrant, Alabama.

H. K. Parker, 5024 41st Way, North, Birmingham, Alabama.

H. E. Southerland, 4106 51st Avenue North, Birmingham, Alabama.

A. J. Stewart, 3028 40th Avenue North, Birmingham, Alabama.

R. A. Sutterlin, House No. 67, Mt. Olive, Alabama.

A. R. Thomas, Jr., 4346 68th Street North, Birmingham, Alabama.

D. C. Vann, 1816 McCaskill Street, Tarrant, Alabama.

J. M. Weldon, 1726 16th Street, North Birmingham, Alabama.

2 (b) (3) This defendant collaborated with other members of the group present at the meeting referred to in (b) (1) above, in compiling a list of persons who would assist in carrying out the stoppage of the plaintiff's business, as agreed upon by them. Plaintiff cannot at this time supply the exact words used by this defendant, but can only state, as above, what he did to indicate his agreement and concurrence.

2 (b) (4) The purpose of the conspiracy was maliciously to injure the plaintiff's business by bringing about, by intimidation of its' employees, a stoppage of plaintiff's business as a common carrier of interstate commerce.

2 (b) (5) It was agreed that this defendant and the other conspirators and those aiding and abetting them would stage a strike without waiting for the matter referred to in 2 (b) (4) above, to be handled in the normal and usual way, and thus, by economic pressure, force and coerce the plaintiff to restore the discontinued jobs by inflicting great loss and damage on the plaintiff. The agreement was that this action should begin by causing a stoppage of work beginning at or about 9:00 P.M., on Sunday, October 23, 1955, using the method of notifying plain-

tiff's employees that a strike was in progress, ordering them to leave and remain away from their work, posting pickets or watchers at the entrances to plaintiff's property, and using direct threats and intimidation if it became necessary to do so.

2 (b) (6) Plaintiff cannot furnish every word or act employed by this defendant in furtherance of the conspiracy at this time. However, he assisted the others, as above stated, in compiling a list of those present at the meeting who would notify other employees that a strike had been called by the firemen, cause those at work to leave their jobs, and act as pickets at the various gates and places of business of the plaintiff. He attended one or more other meetings held by the conspirators and their agents during the strike, and failed and refused to report for work at any time during the period of the strike.

3 (a) So far as plaintiff now knows, this defendant did not individually commit any act of violence, but planned and agreed with others that they would stop the plaintiff's business from operating, and in the course of carrying out this plan and agreement acts of violence were committed by the co-conspiraptors of this defendant and others acting in concert with him.

3 (b) Answered.

4 (a) Plaintiff refers to and adopts, in partial answer to this interrogatory all that appears in answer to Interrogatory No. 1 (b) above. In addition thereto, plaintiff states as follows:

J. B. Otts, Jr. went to the Boyles yard of the plaintiff at about 9:00 P.M., on the night of October 23, 1955, and remained there as the highest ranking union official among those who participated in the conspiracy to stop other employees from carrying on their work, for two or more hours, or until it was apparent that the above described plan of said conspirators was being carried out successfully. He then left, and for the duration of the strike did not directly and personally take part in intimidating employees of the plaintiff so far as plaintiff now knows, but acted as directing head of the conspirators who were engaged in intimidating actions and words, and himself remained absent from his place of work throughout the period of the strike.

4 (b) (1) (2) (3). Answered.

4 (c) Plaintiff does not at this time know of any personal or individual threats or violence which J. B. Otts, Jr., committed, except such as were implicit in his presence at the Boyles Yard on the night of October 23, 1955, with a large group of persons gathered at and around the entrances to the yard, engaged in halting the work of plaintiff's employees, causing them to leave its premises and preventing others from going into its premises to work.

4(d) (1) (2) (3) Answered.

5 (a) He did.

5 (b) (1) At or near the regular meeting place of Local No. 937, Brotherhood of Locomotive Firemen and Enginemen, in Inglenook on the night of Friday,

October 21, 1955, and later at the residence of H. K. (Shorty) Parker, 3024 41st Way, North, Birmingham, Alabama, on the afternoon of Sunday, October 23, 1955, at about 4:30-5:00 P.M.

5 (b) (2) Those present on Friday night, were W. L. Grissom, H. K. Parker, C. L. McCutcheon, J. B. Otts, Jr. Those present on Sunday afternoon were the persons listed in answer to Interrogatory No. 2 (b) (2) above.

5 (b) (3) Otts, as Local Chairman of Local No. 997, Brotherhood of Locomotive Firemen and Enginemen, was the ranking leader of the group who formed the conspiracy He is the man who prescribed the wording of certain picket signs which were obtained for use in advertising the fact that a strike was in progress. He was active in agitating the taking of strike action by spreading the opinion that the action of the company in abolishing the outside hostler helper jobs was illegal and improper, prior to the time the strike was begun. At the meeting at Parker's home on Sunday, October 23, 1955, he encourged the strike by giving his opinion that it would be legal. He went to the property of his employer on Sunday night at or about the time fixed for the action to begin and remained there in his capacity as leader of the group causing the strike, and chief representative, until it was apparent that the work of the employer had been effectively halted. He communicated by long distance telephone with Firemen J. B. Bryam at Montgomery, after which communication said Bryam and others acting in concert with him part-

[redacted]

[redacted]

[redacted]

7 (c) Yes.

[redacted]

7 (b) (2) Answered.

7 (b) (3) Answered.

7 (c) For answer to this interrogatory, plaintiff adopts the answer heretofore given in Interrogatory No. 1 (b) above.

7 (d) (1) (2) (3) For answer to this interrogatory, plaintiff adopts the answer heretofore given to Interrogatory No. 1 (b) above.

(e) Yes.

8 (b) (1) Friday night, October 21, 1955, at the regular meeting place of his local union, and Sunday afternoon October 23, 1955, in a garage at his own residence, 3024 41st Way North, Birmingham, Alabama, at in-wit, 5:00 P.M.

8 (b) (2) Answered in No. 3 (b) (3) above.

8 (b) (3) Parker took part in the general discussion by the group of conspirators leading up to the decision and agreement to cause a stoppage of the business of the plaintiff. He remained in the meeting from beginning to end, and at or about the agreed time was present on the premises of the plaintiff, lending support to the successful effort to cause all employees to leave work. He failed and refused to work at his own employment thereafter, the period of the strike has terminated promptly when it was over. Plaintiff cannot supply the specific words used by Parker to indicate agreement with other conspirators but can only state, as above, what he did.

8 (b) (4) Plaintiff adopts in answer to this interrogatory the answer given above to Interrogatory No. 2 (b) (4).

8 (b) (5) Plaintiff adopts as the answer to this interrogatory the answer given above to Interrogatory No. 2 (b) (5).

8 (b) (6) Answered.

9 (a) Insofar as this interrogatory relates to the individual and personal acts of this defendant, as distinguished from those of his co-conspirators and those abetting him and them, plaintiff can at this time only state that Parker participated in the actual stopping of work at Boyles on October 23, 1958, and thereafter assisted pickets by his presence at or about an entrance to plaintiff's property on at least two other nights during the strike or work stoppage, as above stated.

9 (b) As before stated, the intimidation exercised by Parker and others affected and involved, and effectively prevented some two thousand persons, members of all crafts as well as officials of the plaintiff, from carrying out their duties for a period of approximately three days and three nights. No individual was directly subjected to physical violence at the hands of H K. Parker sa far as plaintiff is presently able to state.

10 (a) Yes.

10 (b) For answer to this interrogatory, plaintiff refers to and adopts the answer to interrogatory

No. 1 (b) above. For further answer hereto, plaintiff [illegible] personally notice as a member of the [illegible] which went in and into the [illegible] night, October [illegible] [illegible] at various times [illegible] served as a [illegible] in plaintiff's premises [illegible] known, was designed [illegible] effect of being intimidating to its employees.

10 (b) (1) For answer to this interrogatory, plaintiff refers to and adopts, in words and figures, the answer previously given to Interrogatory No. 1 (b) (1) above.

10 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

E. L. Sexton, [illegible] Ave. U., Birmingham, Alabama.

L. P. Jordan, [illegible] Avenue, Tarrant, Alabama.

J. C. Laney, [illegible] Greenwood Street, Birmingham, Alabama.

Ervis Rich, Route 12, Box 1370, Birmingham, Alabama.

R. E. Thomas, [illegible] Jackson Street, Birmingham, Alabama.

C. F. Holston, Care L&N R. R. Co., Birmingham, Alabama.

Ed Derrity, 8716 First Avenue South, Birmingham, Alabama.

P. O. Chapman, 3810 40th Avenue North, Birmingham, Alabama.

Dewey Cavino, 4266 40th Avenue North, Birmingham, Alabama.

A. R. Thomas, defendant.

H. K. Parker, defendant.

J. M. Weldon, defendant.

J. B. Otts, Jr., 818 Jefferson Boulevard, Tarrant, Alabama.

H. E. Southerland, defendant.

E. E. Houts, 536 South 56th Street, Birmingham, Alabama.

10 (b) (3) Answered.

10 (c) Answered.

10 (d) (1) (2) (3) Answered.

11 (a) Yes.

11 (b) (1) At the regular meeting place of Local No. 937, on Friday night, October 21, 1955, and about 5:00 Pm., Sunday, October 23, 1955, at the home of defendant H. K. (Shorty) Parker, 3024 41st Way North, Birmingham, Alabama.

11 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

11 (b) (3) Plaintiff cannot at this time supply the exact words and actions of this defendant, but is informed and believes that he expressed concurrence with the decision to cause and enforce the "wild-cat" strike agreed upon by the conspirators at the meeting, and thereafter this defendant took an active part in furthering said conspiracy.

11 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4) above.

11 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5) above.

11 (b) (6) Answered.

12 (a) So far as plaintiff presently knows, this defendant did not individually or directly participate in any act of violence during the period covered by the stoppage of its' business, but assisted in informing employees that a strike was in progress, and participated in picketing during the period of the "wild-cat" strike, in the carrying out of which acts of violence

were committed and threats voiced by co-conspirators, named agents and abettors of this defendant, and the other conspirators.

12 (b) Answered.

13 (a) Yes.

13 (b) For answer to this interrogatory, plaintiff refers to adopts the answer to Interrogatory No. 1 (b) above. For further answer hereto, plaintiff says that W. L. Grissom was one of those who acted as a picket and watcher at and near one or more of the entrances to plaintiff's places of business including, to wit, Harris Avenue and 20th Street, in Birmingham, which action, as was generally known to him and others concerned, was designed to be and had the effect of being intimidating to plaintiff's employees.

13 (b) (1) For answer to this interrogatory, plaintiff adopts the answer previously given to Interrogatory No. 1 (b) (1) above.

13 (b) (2) As of the time of answering these interrogatories, and to the best of plaintiff's knowledge, the following:

H. D. Camp, 1330 17th Avenue South, Birmingham, Alabama.

P. O. Chapman, 3810 40th Avenue North, Birmingham, Alabama.

R. E. Frazer, 616 Jackson Boulevard, Tarrant, Alabama.

J. V. Saab, 2365 23rd Street, Ensley, Birmingham, Alabama.

13 (b) (3) Answered.

13 (c) Answered.

13 (d) (1) (2) (3) Answered.

14 (a) Yes.

14 (b) (1) At the regular meeting place of his local union in the night of October 21, 1955, and about 5:00 P.M. Sunday, October 23, 1955, at the home of defendant, H. K. (Shorty) Parker, 5024 41st Way, North, Birmingham, Alabama.

14 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

14. (b) (3) Plaintiff cannot presently supply the exact words and actions of this defendant, but is informed and believes that he expressed concurrence with the decision to cause and enforce the "wild-cat" strike agreed upon by the conspirators at the meeting, and thereafter this defendant took an active part in furthering said conspiracy.

14 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4) above.

14 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5) above.

14 (b) (6) Answered.

15 (a) So far as plaintiff previously knows, this defendant did not individually or directly participate in any act of violence, but assisted in informing employees that a strike was in progress, and participated in picketing and watching during the period of the "wild-cat" strike, in the carrying out of which strike acts of violence were committed by co-conspirators, agents and abettors of this defendant.

15 (b) Answered.

16 (a) Yes.

16 (b) For answer to this interrogatory, plaintiff refers to and adopts the answer to Interrogatory No. 1 (b) above. For further answer hereto, plaintiff says that J. M. Weldon on the night of October 21, 1955, in company with others, displayed an open knife to Lee Thomas, a 66 year old colored fireman, whose residence address is 325 Goldwire Street, Birmingham, Alabama, telling him, in substance, that there was a strike in, and that if he came back to work, he (Thomas) would be killed. This defendant used profane language and referred to Thomas as a "scab" and ordered him not to "scab" during this strike. The incident described took place on the premises of the plaintiff at its passenger station, and by reason of it, as well as fear of others, said Lee Thomas did not work until he was notified that the strike was over.

16 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

Lee Thomas, address as above.

Robert Parker, 4809 Greenwood Street, Birmingham, Alabama.

16 (b) (3) Answered.

16 (c) Answered.

16 (d) (1) (2) (3) Answered.

17 (a) Yes.

17 (b) (1) About 4:30 or 5:00 P.M., Sunday, October 23, 1955, at the home of defendant, H. K. (Shorty) Parker, 5024 41st Way North, Birmingham, Alabama.

17 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

17 (b) (3) This defendant expressed general agreement with the plan agreed upon and subsequently carried out by the conspirators and others acting as their agents, co-conspirators and abettors. He stated a desire to be on the "detail", a term generally known and understood by those present to mean a "strong-arm group" or "goon squad" and stated that he (Weldon) owned a baseball bat. All the exact actions and words spoken by Weldon are not known to plaintiff at this time. Subsequently to the meeting this defendant actively assisted in carrying out the decision made at the meeting, and himself remained absent from his duties for the entire period of the strike.

17 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4), above.

17 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5), above.

17 (b) (6) Answered.

18 (a) Yes.

18 (b) Answered. (See 16 (b) and 16 (b) (2) above.

19 (a) Yes.

19 (b) (1) Plaintiff refers to and adopts in partial answer to this interrogatory all that appears in answer to Interrogatory No. (1) (b) and (1) (b) (1), above. In addition thereto, plaintiff states as follows: H. E. Southerland was a member of the group who met at the home of H. K. (Shorty) Parker on Sunday, October 23, 1955, and planned and agreed upon the details of the conspiracy to cause the strike and stoppage of plaintiff's business and operations. Promptly following the meeting, upon the representation that he was sick, he laid off his job assignment and remained off until he returned shortly after he learned that the strike was over. At, to-wit, 8:30 P.M. on Sunday night, he met with others in the vicinity of plaintiff's Boyles Yard for the purpose of assisting, as needed, in the closing of its operations.

19 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

Dewey Cavins, 4225 48th Avenue North, Birmingham, Alabama.

C. F. Hobson, 1716 Oak Street N. W., Birmingham, Alabama.

18 (b) (3) Answered.

18 (c) For answer to this interrogatory plaintiff refers to and adopts the answer given to Interrogatory No. (1) (c) above.

19 (d) (1) (2) (3) Answered.

20 (a) Yes.

20 (b) About 5:00 P.M. Sunday, October 23, 1955 at the home of defendant, H. K. (Shorty) Parker, 9024 41st Way, North, Birmingham, Alabama.

20 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

20 (b) (3) Plaintiff cannot supply the exact words and actions of this defendant in the meeting, but is informed and believes that he indicated concurrence with the decision to cause and enforce the "wild-cat" strike agreed upon by the co-conspirators at the meeting, and thereafter this defendant actively participated in furthering the purpose of the group, as stated above.

20 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4) above.

20 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5) above.

20 (b) (6) Answered.

21 (a) So far plaintiff presently knows this defendant did not directly and as an individual commit any act of violence, but was a member of the group which formed and carried out the conspiracy, was present with the crowd when the employees at Boyles were caused to leave their jobs on Sunday, October 23, 1955, at the beginning of the shut-down of plaintiff's business, in the course of which co-conspirators, agents and abettors of this defendant carried out acts of violence and other intimidating conduct as described above.

21 (b) Answered.

22 (a) Yes.

22 (b) For partial answer to this interrogatory plaintiff refers to and adopts the answer to Interrogatory No. 1 (b) above; for further answer hereto, plaintiff says that M. L. Hall, immediately after leaving the meeting at the Parker home in which the conspiracy and plan was formed and decided upon, laid off his job. Thereafter, at about 8:30 to 9:00 P.M. on October 23, 1955, along with the majority of those who had agreed upon the shut-down of the plaintiff's business, he went to the Boyles Yard of plaintiff, entered the yard and advised employees then at work that the firemen had called a strike and instructed them to get off their jobs and out of the yard. Others

among the conspirators furthering the plan at or about this time and place used threats and displayed weapons. Thereafter on October 24, 1955, Hall acted as a picket and member of the Master Mechanics gate at Empire Yards. He did not work at any time during the period of the strike, but presented himself for work as soon as it was learned that the strike had been called off.

23 (b) (1) For answer to this interrogatory, plaintiff refers to and adopts, in words and figures, the answer previously given to Interrogatory No. 1 (b) (1) above.

23 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

W. T. Owen, 1221 9th Court South, Birmingham, Alabama.

C. F. Hobson, 1716 Oak Street N. W., Birmingham, Alabama.

H. T. Simrell, 3916 41st Avenue North, Birmingham, Alabama.

R. E. Frazer, 616 Jackson Boulevard, Tarrant, Alabama.

23 (b) (3) Answered.

23 (c) Answered.

23 (d) (1) (2) (3) Answered.

29 (a) Yes.

29 (b) (1) At the home of H. K. (Shorty) Parker, 5024 41st Way, North, Birmingham, Alabama, at about 8:00 P.M. Sunday, October 23, 1955.

23 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

23 (b) (3) Plaintiff cannot presently supply the exact words and actions of this defendant, but is informed and believes that he expressed concurrence with the decision and plan to cause and enforce the "wild-cat" work stoppage or strike agreed upon by the conspirators at the meeting, and thereafter this defendant took an active part in furthering said conspiracy, in the manner described above.

23 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4) above.

23 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. (2) (b) (5) above.

23 (b) (6) Answered.

24 (a) So far as plaintiff presently knows, M. L. Hall did not, as an individual, personally commit any act of violence but he assisted the other conspirators in causing other employees to leave their jobs and to remain away from them throughout the period of the "wild-cat" strike caused by them, and in the progress

of the same various acts of violence were committed and threats of violence made by co-conspirators, agents and abettors of this defendant and the other conspirators named.

24 (b) Answered.

25 (a) As an individual actor, other than as a member of the group which met at the home of H. K. (Shorty) Parker and formulated the plan and conspiracy to cause a shut-down and stoppage of plaintiff's business, this defendant is not presently known to have taken a part in intimidating other employees.

25 (b) (1) (2) (3) Answered.

25 (c) Yes, as a messenger.

25 (d) (1) (2) (3) This defendant, on October 22, 1955, at about 6:00 A.M., at the request of defendants, A. B. Thomas and C. L. McCutcheon communicated to L. C. Parrett, an engineer with whom he was then working at the Boyles Yard, a threatening message warning Parrett against attempting to work during the impending strike as he had done in a prior strike.

26 (a) So far as plaintiff presently knows, only to the extent that he was a member of the group which met at the Parker home on Sunday afternoon October 23, 1955.

26 (b) (1) (2) (3) (4) (5) (6) So far as plaintiff's investigation reveals as of the time of the answering of these interrogatories, this defendant did not say or do anything while in said meeting. At 5:30 P.M. on

the date of the meeting, however, he laid off from work, representing that he was sick and remained absent from his employment throughout the period of the "wild-cat" strike and shut down of plaintiff's work.

26 (b) Answered.

27 (a) So far as plaintiff knows at this time, he did not personally and individually commit or participate in any act of violence. At the present time, plaintiff is not sufficiently informed to give a categorical answer to this interrogatory, being only informed that this defendant was a member of the group which met at H. K. Parker's home and thereafter failed to work during the period of the strike.

27 (b) Answered.

28 (a) No.

28 (b) (1) (2) (3) Answered.

28 (c) Answered.

28 (d) (1) (2) (3) Answered.

29 (a) Defendant T. A. Kennedy was one of the group at the meeting at the home of H. K. Parker on Sunday, October 23, 1955, at which the conspiracy described in answer to interrogatories 2 (a) and 2 (b) above, was formulated and entered into. However, as of the time of answering these interrogatories plaintiff is not informed that said T. A. Kennedy took an active part in the formation of the conspiracy agreed

upon by the other conspirators. As of this time, plaintiff's information is that he took no part in the formation nor the execution of the conspiracy, other than he was involved in his laying off his own job as soon as he left the meeting at Parker's home, and remaining absent from work during the period of the strike.

29 (b) (1) (2) (3) (4) (5) (6) Answered.

30 (a) Not to plaintiff's present knowledge, information and belief.

30 (b) Answered.

31 (a) Yes.

31 (b) For partial answer to this interrogatory, plaintiff refers to and adopts the answer given to Interrogatory 1 (b) above.

For additional answer to this interrogatory plaintiff says as follows:

H. M. Baum, after attending the meeting at the home of H. K. (Shorty) Parker, went to the Boyles Yard of the plaintiff on the night of October 28, 1955, and met with others of the conspirators for the purpose of enforcing the decision agreed upon at said meeting. He went into the Yard Office of the plaintiff at about 8:00 P.M. on that date armed with a club or stick, and ordered the Trainmaster and all clerks on duty to get out, and remained there until this order had been complied with. He attempted to persuade others to serve as pickets and watchers at one or more of the entrances to plaintiff's yard on the same

night. He warned one or more employees not to make any further effort to work during the strike. On October 24, 25, and 26, 1955, Baum served as a picket or watcher at one or more of the entrances of plaintiff's yards from about 6:30 each morning until about 3:00 each afternoon, where he was a member of groups of men gathered near the gate. He was active during this period in preventing other employees and persons wishing to go into the premises from entering them, and did not report for work at any time during the period of the "wild-cat" strike which is the subject of this suit.

31 (b) (1) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 1 (b) (1) above.

31 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

J. F. Zuidethoek, 200 14th Court, N.W., Birmingham, Alabama.

C. J. Strotter, 216 2nd Street, Birmingham, Alabama.

B. M. Mitchell, c/o L&N Railroad Company, Evansville, Indiana.

C. T. Myrick, 1235 33rd Street Norwood, Birmingham, Alabama.

T. E. Davis, c/o L&N RR Co., Birmingham, Alabama.

Coy Purkey, 1529 Mountain Drive, Birmingham, Alabama.

E. E. Houts, 536 South 56th Street, Birmingham, Alabama.

O'Neal Coleman, 3825 39th Court North, Birmingham, Alabama.

E. L. Sexton, 4624 Avenue U, Birmingham, Alabama.

C. F. Hobson, 1716 Oak Street N.W., Birmingham, Alabama.

Louie B Wilkes, 513 Oxmoor Road, Birmingham, Alabama.

W. D. Wren, Jr., 4341 Harmon Street N. Birmingham, Alabama.

C. B. Hill 4324 Greenwood Street, Birmingham, Alabama.

A. S. Johnson, 1401 Woodlawn Avenue, Birmingham, Alabama.

John A. Wall, Jr., 1225 Linthicum Street, Tarrant, Alabama.

P. O. Chapman, 3810 40th Avenue North, Birmingham, Alabama.

J. T. McDaniel, 1308 13th Street North, Birmingham, Alabama.

George W. Brittain, 4212 38th Avenue North, Birmingham, Ala.

C. V. Steelman, 2425 37th Avenue North, Birmingham, Ala.

J. W. Huckaby, 3823 43rd Avenue North, Birmingham, Alabama.

J. W. Scott, 4012 33rd Avenue North, Birmingham, Alabama.

O. W. Garnett, 3812 North 43rd Avenue, Birmingham, Alabama.

L. B. Sheffield, 3809 Hale Avenue, Biemingham, Alabama.

31 (b) (3) Answered.

31 (c) Answered.

31 (d) (1) (2) (3) (4) (5) (6) Answered.

32 (a) Yes.

32 (b) At the home of defendant H. K. (Shorty) Parker, 5024 41st Way North, Birmingham, Alabama, at about 5:00 P.M. Sunday, October 23, 1955.

32 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

32 (b) (3) This defendant took an active part in the general discussion by the group of conspirators

leading up to the decision and agreement to cause a stoppage of the business of the plaintiff. He remained at the meeting, evidencing agreement with and support of the plan, and thereafter fully supported the conspiracy with his personal actions and efforts as set forth above. Plaintiff cannot at this time supply the specific words used by Bauss to indicate agreement with the other conspirators but can only state, as above, what he did in support of the plan.

32 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. (2) (b) (4) above.

32 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5), above.

32 (b) (6) Answered.

33 (a) Answered.

33 (b) Answered.

34 (a) Yes.

34 (b) For answer to this interrogatory plaintiff refers to and adopts the answer given to Interrogatory No. 1 (a) above. In addition thereto, plaintiff says as follows: Defendant R. H. Letchman was one of a group, including other firemen who had conspired and agreed to cause plaintiff's employees not to perform their duties by means of a strike, who interfered with and intimidated two officials of the plaintiff, B. M. Mitchell and C. E. Waelde by block-

ing the entrance to a part of plaintiff's property, viz, the Master Mechanic's gate at Boyles Yard. In addition to this specific incident, the conspirators causing the strike including this defendant, and their agents, co-conspirators and abettors acting in concert with them and in their behalf prevented all or substantially all plaintiff's employees at Birmingham, Decatur, Cullman and Montgomery, Alabama, from performing any duties, and said intimidation affected, to wit, more than two thousand employees during the period from, to wit, 8:45 P.M. Sunday, October 23, 1955 to and including, to wit, 7:00 P.M. Wednesday, October 26, 1955.

34 (b) (1) In addition to the employees affected generally by said intimidation, as stated above, too numerous to mention by name, the action referred to in answer to Interrogatory No. 34 (b) involved B. M. Mitchell, c/o L&N Railroad Company, Evansville, Indiana and C. E. Waelde, c/o L&N Railroad Company, Montgomery, Alabama, and caused them to remain absent from all their duties as Train Master and Assistant Train Master at Birmingham, from, to wit, Noon, October 24, 1955, to, to wit, 7:00 P.M. October 26, 1955. This intimidating encounter took place at, to wit, Noon, October 24, 1955, at the point already stated.

34 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

B. M. Mitchell, c/o L&N Railroad Company, Evansville, Indiana.

C. E. Waelde, c/o L&N Railroad Company, Montgomery, Alabama.

"Jody" Johnston, c/o L&N Railroad Company, Birmingham, Alabama.

A. R. Thomas, Jr., Defendant.

C. S. Hawkins, 1269 Park Avenue, Tarrant, Alabama.

Bruce Barnett, 4146 38th Avenue North, Birming- Alabama.

34 (b) (3) Answered.

34 (c) Answered.

34 (d) Answered.

35 (A) Yes.

35 (b) (1) At about 5:00 P.M. October 23, 1955, at the home of H. K. (Shorty) Parker. 3024 41st Way North, Birmingham, Alabama.

35 (b) (2) For answer to this interrogatory plaintiff refers to and adopts the answer given to Interrogatory No. 2 (b) (2) above.

35 (b) (3) Letchman was present at the meeting at which the conspiracy was decided upon, and remained until the decision had been made and agreed upon. Thereafter, he failed to report for work at any time during the strike. Plaintiff cannot, as of this

time, supply the specific words used by Letchman to indicate his agreement with the plan.

35 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4), above.

35 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5) above.

35 (b) (6) Answered.

36 (a) With the exception of the act described in answer to Interrogatory No. 34, above, plaintiff knows of no personal and individual acts committed by Letchman, as distinguished from those committed by his co-conspirators, agents and abettors.

36 (b) Answered.

37 (a) W. C. Burnett is not a party defendant to this suit. According to plaintiff's present knowledge, information and belief he had no part in the matters which are the subject matter of the suit.

37 (b) (1) (2) (3) Answered.

37 (c) Answered.

37 (d) (1) (2) (3) Answered.

38 (a) Answered.

38 (b) (1) (2) (3) (4) (5) (6) Answered.

39 a Answered.

39 (b) Answered.

40 (a) Yes.

40 (b) For partial answer to this interrogatory, plaintiff refers to and adopts the answer given to Interrogatory 1 (b) above. Further answering this interrogatory, plaintiff says:

For additional answer to this interrogatory, plaintiff says that A. R. Thomas, Jr. was one of the principal ring-leaders and agitators of the "wild-cat" strike, and was spreading word about it and making preparations for it before the meeting at Parker's home on Sunday, October 23, 1955, was held. On Saturday morning, October 22, 1955, he and C. L. McCutcheon, another defendant, sent a threatening message to L. C. Parrett, an employee of plaintiff, through defendant, R. A. Sutterlin. On the same day, A. R. Thomas, Jr., J. B. Otts, Jr. and C. L. McCutcheon agreed to procure picket signs for use in the wild-cat strike, which signs plaintiff is informed, were subsequently obtained by A. R. Thomas and transported to its premises in his blue Dodge convertible automobile Thomas attended the meeting at H. K. (Shorty) Parker's home on Sunday afternoon, October 23, 1955, and was active as an advocate of calling a strike immediately. Soon after he left this meeting, at 5:53 P. M. Sunday, October 23, 1955, upon the pretext that he was sick, he laid off his job assignment. At about 8:30 P.M. on that date, he joined other conspirators on the property of the plaintiff at its' Boyles Yard, and participated with others in picketing and spreading state-

ments that a strike had been called among employees on their jobs and those who subsequently reported to go to work. He remained at the Boyles Yard the entire night, and on the following day went to the premises of plaintiff on Morris Avenue, where he remained with a large number of others for several hours during the forenoon at or near the entrance to the office building. During this time he blocked several persons, members of the public and employees from entering the building, used profane and threatening language, and forbade and prevented them from entering the premises on the ground that a strike was going on. He pushed one employee backward while the latter was attempting to enter. Later in this day he, in company with others who were members of the conspiring group, blocked the Master Machanic's gate at Plaintiff's Boyles Yard with an automobile, intercepted two officials of the plaintiff attempting to enter its premises to look after live-stock and perishable property using profane language and threats to them, in substance that they would only permit them to go into the yard for 30 minutes, and if they were not out by the end of that time they would come in and get them. On October 24, 1955, Thomas warned three engineers not to take their engines out as long as the strike was in progress. On this date, he also took part in posting pickets at Boyles, instructing one or more men to identify anyone who went into the yard.

40 (b) (1) For partial answer to this interrogatory, plaintiff refers to and adopts the answer given to interrogatory (1) (b) (1) above. More specifically, among many others, the names of whom plaintiff at the present stage of its investigation is not yet in a position to supply, persons accosted and intimidated include B. M. Mitchell, c/o L&N Railroad Company,

Evansville, Indiana, C. E. Waelde, c/o L&N Railroad Company, Montgomery, Alabama, H. G. Breetz, c/o L&N Railroad Company, Louisville, Kentucky, all on October 24, 1955, the first two at Boyles at, to wit, 12:00 Noon, and the last at 1909 Morris Avenue, Birmingham, during the forenoon. Trainmaster Mitchell and Assistant Trainmaster T. M. Waelde were prevented from performing any duties until after the strike ended. Mr. Breetz was prevented from having an important conference with the Division Superintendent regarding the serious situation caused by the strike, both as to passengers unable to reach their destinations and industries in Birmingham and elsewhere being damaged and crippled in their operations by not being able to ship or receive freight.

40 (b) (2) As of the time of answering these interrogatories and to the best of defendant's knowledge, the following:

B. M. Mitchell, c/o L&N Railroad Company, Evansville, Indiana.

C. E. Waelde, c/o L&N Railroad Company, Montgomery, Alabama.

H. G. Breetz, c/o L&N Railroad Company, Louisville, Dentucky.

C. A. Schilleci, 1627 16th Avenue South, Birmingham Alabama.

"Jody" Johnson, c/o L&N Railroad Company, Birmingham, Alabama.

R. H. Letchman, Defendant.

C. S. Hawkins, 1260 Park Avenue, Tarrant, Alabama.

Bruce Barnett, 4146 38th Avenue North, Birmingham, Alabama.

J. V. Saab, 2365 23rd Street (Ensley) Birmingham, Alabama.

Claude J. Johnston, 1512 Valley Avenue, Birmingham, Alabama.

H. D. Camp, 1330 17th Avenue, South, Birmingham, Alabama.

40 (b) (3) Answered.

40 (c) Yes.

40 (d) (1) Answered.

40 (d) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

B. M. Mitchell, c/o L&N Railroad Company, Evansville, Indiana.

C. E. Waelde, c/o L&N Railroad Company, Montgomery, Alabama.

E. D. Love, c/o L&N Railroad Company, Louisville Kentucky.

H. G. Breetz, c/o L&N Railroad Company, Louisville, Kentucky.

E. F. Robertson, 1906 Beech Avenue, Nashville, Tennessee.

C. L. McCutcheon, Defendant.

C. F. Hobson, 1716 Oak Street, N W., Birmingham, Alabama.

Jack Petersen, 1719 11th Avenue South, Birmingham, Alabama.

C. A. Schilleci, 1627 16th Avenue, South, Birmingham, labama.

L. C. Jordan, 1431 Sloan Avenue, Tarrant, Alabama.

S. W. Street, 1614 43rd Street W., Birmingham, Alabama.

"Jody" Johnson, c/o L&N Railroad Company, Birmingham, Alabama.

R. H. Letchman, Defendant.

C. S. Hawkins, 1209 Park Avenue, Tarrant, Alabama.

E. L. Sexton, 4624 Avenue U, Birmingham, Alabama.

J. B. Otts, Jr., Defendant.

Edward Dorrity, 6715 First Avenue E., Birmingham, Alabama.

Bruce Barnett, 4146 30th Avenue, North, Birmingham, Alabama.

Ervin Rich, Route 12, Box 1370, Center Point, Alabama.

R. A. Sutterlin, Defendant.

R. L. Lathem, 1741 Princeton Avenue, Birmingham, Alabama.

J. C. Laney, 4208 Greenwood Street, Birmingham, Alabama.

E. R. Adams, 5009 43rd Place, North, Birmingham, Alabama.

J. V. Saab, 2365 23rd Street (Ensley), Birmingham, Alabama.

Claude J. Johnston, 1512 Valley Avenue, Birmingham, Alabama.

T. M. McCormick, 1609 Woodward Drive, Tarrant, Alabama.

J. F. Doster, 4200 50th Avenue, North, Birmingham, Alabama.

R. O. Spencer, 1420 Gulfport (Wylam) Birmingham, Alabama.

H. D. Camp, 1330 17th Avenue, South, Birmingham, Alabama.

P. R. Wilhite, 137 Green Springs Avenue, Birmingham, Alabama.

J. T. Norris, 813 42nd Place, North, Birmingham, Alabama.

H. K. Parker, Defendant.

L. C. Parrett, Route 6, Box 57, Birmingham, Alabama.

40 (d) (3) At the present stage in its investigation, which is still in progress as to this defendant, as well as to all other defendants and additional persons who were involved with them in carrying out the conspiracy, plaintiff is not able to answer more specifically than has been stated in answer to Interrogatory 40 (b) above.

41 (a) Yes.

41 (b) (1) In addition to his activity in the preliminary stages of the strike, A. Reese Thomas present throughout the meeting at the home of H. K. (Shorty) Parker, on Sunday afternoon, October 23, 1955, at which, at about 5:00 P.M. the conspiracy was definitely formed.

41 (b) (2) For answer to this interrogatory plaintiff refers to and adopts the answer given to Interrogatory No. 2 (b) (2) above.

41 (b) (3) This defendant not only agreed with the others to form the conspiracy but was one of the principal advocates and leaders in the forming of it. He stated, in urging the prompt starting of a strike, that if the company was allowed to get away with abolishing the outside hostler helper jobs the next thing they would do would be to abolish the firemen's jobs; that it was time to "pull the pin" and get the strike started that night; and in response to a suggestion that the matter might be taken up through the method called for by the collective bargaining contract and the Railway Labor Act, he said "Hell, no. That might take a year or two." Thereafter, Thomas was active in supporting the conspiracy throughout the period of the strike, as stated above.

41 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4) above.

41 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5) above.

41 (b) (6) Answered.

42 (a) Answered.

42 (b) Answered.

LOUISVILLE & NASHVILLE
RAILROAD COMPANY,
By CONRAD BUFFINGTON.

State of Alabama,
Jefferson County.

Personally appeared before me, the undersigned authority in and for said County in said State, Conrad Buffington, who is known to me, and who being by me first duly sworn upon his oath deposes and says that he is agent of plaintiff, Louisville and Nashville Railroad Company, duly authorized to make this affidavit, and that the statements contained in the foregoing answers to interrogatories are true and correct, to the best of his knowledge, information and belief.

CONRAD BUFFINGTON.

Sworn to and subscribed before me this 25th day of April, 1956.

LUCILE ADAMS,
Notary Public.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon Jackson, Rives & Pettus, & Peterson Attorneys for defendants J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, O. L. McCutcheon, W. L. Grissom, J. M. Weldon, H. E. Southerland, M. L. Hall and R. A. Sutterlin, by mailing a copy to them, postage prepaid, properly addressed to their office in the Massey Building, Birmingham 3, Alabama.

This April 25, 1956.

WHITE GIBSON, JR.,
Of Counsel for Plaintiff.

MOTION TO DROP T. A. KENNEDY AS PARTY DEFENDANT.

Filed July 29, 1966.

(Title Omitted.)

Comes the plaintiff in the above styled cause and shows to the Court the following:

1. At the time of filing the original complaint in this cause, plaintiff was informed that the paralyzing work stoppage on its lines in October of 1965 directly resulted from and was caused by the conspiracy and concerted action of all of those persons present at a meeting held at the home of defendant, H. K. Parker, on the afternoon of October 23, 1965 and that among those present at said meeting was defendant T. A. Kennedy.

2. During the pendency of this suit, plaintiff has conducted an extensive investigation into the work stoppage, the effects thereof as well as the circumstances leading thereto and has as part of said investigation taken the depositions upon oral examination of virtually all of the defendants as well as others with knowledge of the conspiracy and intimidation employed in carrying out the unlawful combination of the defendants.

3. As a result of said examination and investigation plaintiff has learned that defendant T. A. Kennedy while present at the aforesaid meeting at the home of H. K. Parker at said time did, in fact, attend said meeting for the primary purpose of dissuading

those present from bringing about the work stoppage there agreed upon and to prevent, if possible, a conspiracy to utilize the means of violence, threats of violence and intimidation to wrongfully injure the plaintiff. Plaintiff is further informed as a result of said investigation that upon observng the failure of his efforts to prevent those present from joining in such combination, defendant T. A. Kennedy excused himself from the said meeting and left, taking no further part in the work stoppage or the illegal activities participated in by other defendants designed to carry the same out.

Wherefore, plaintiff in the interest of justice and fairness to the said defendant, T. A. Kennedy, moves the Court to permit the said T. A. Kennedy to be dropped and struck as a party defendant to this cause and to go hence without day and plaintiff further moves the Court to permit or require it to file such amended pleadings as may to the Court appear proper or just under the circumstances.

WHITE E. GIBSON, JR.,
JAMES A. SIMPSON,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to drop T. A. Kennedy as party defendant has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by mailing a copy, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 27 day of July, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to drop T. A. Kennedy as party defendant has been served upon Hon. Clifford Fulford, attorney for defendants for whom he appears, by mailing a copy, postage prepaid, to his office in the Massey Building, Birmingham, Alabama, this 27 day of July, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to drop T. A. Kennedy as party defendant has been served pon Hon. Clifford Fulford, attorney for defendant T. A. Kennedy, by mailing a copy, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 27 day of July, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

8/16/56—Upon consideration amendment to drop T. A. Kennedy as party defendant is granted, and said T. A. Kennedy be and he hereby is dismissed as a party defendant.

H. H. GROOMS,
U. S. District Judge.

MOTION BY PLAINTIFF TO BRING IN ADDITIONAL PARTIES.

Filed July 30, 1956.

(Title Omitted.)

Plaintiff moves the Court for an order permitting it to make Bruce Barnett, J. O. Bentley, William F. Pennington, H. D. Dismukes, Arthur E. Hicks, J. B. Byram, Howard Eugene Anderson and Oliver C. Breedlove parties defendant in this cause; directing that proper process be issued and served upon each of said persons; and permitting and requiring plaintiff to serve and file summons and amended complaint to that end, and as grounds therefor, shows unto the Court as follows:

1. This is an action based upon an alleged wrongful interference with and injury to the business of the plaintiff, pursuant to a conspiracy and by means of causing a work stoppage of all of its employees at Birmingham, Decatur, Montgomery and intervening points on its lines.

2. The proposed additional defendants, Bruce Barnett, J. O. Bentley William F. Pennington, H. D. Dismukes, Arthur E. Hicks and J. B. Byram, joined in the execution of and participated in furthering the objects of said conspiracy by bringing about the stoppage of work by plaintiff's employees at plaintiff's places of business in Decatur, Alabama, and Montgomery, Alabama.

3. The proposed additional defendant, Howard Eugene Anderson, was a participant in the formation and subsequent execution of the conspiracy.

4. The proposed additional defendant, Oliver C. Breedlove, joined in the execution and participated in furthering the objects of said conspiracy by soliciting and obtaining pickets or persons to post themselves at entrances to plaintiff's premises and to assist in continuing said work stoppage.

5. Each of said proposed additional defendants is a resident citizen of Jefferson County, Alabama, is subject to the jurisdiction of this Court, both as a venue and service of process, and each can be made a party defendant herein without depriving this Court of jurisdiction.

6. At the time of filing the original complaint in this cause, plaintiff was not fully informed with respect to the activities of the aforesaid additional defendants and has become informed thereof following extensive investigation accompanied by the taking of depositions of the original defendants and others.

WHITE E. GIBSON, JR.,
JAMES A. SIMPSON,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing motion by plaintiff to bring in additional parties has this day been mailed, postage prepaid, to Hon. R. Macey Taylor, attorney for defendants for whom he appears, at his office in the Frank Nelson Building, Birmingham, Alabama, this 27 day of July, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing motion by plaintiff to bring in additional parties has this day

been mailed, postage prepaid, to Hon. Erle Pettus, Jr., attorney for defendants for whom he appears, at his office in the Massey Building, Birmingham, Alabama, this 27 day of July, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

8/16/56—Upon consideration plaintiff's motion to amend bringing in additional parties granted, and process is directed to be issued to the enumerated parties, as parties defendant to this cause.

H. H. GROOMS,
U. S. District Judge.

MOTION TO CONSTRUE PRE-TRIAL ORDER.

Filed Aug. 10, 1956.

(Title Omitted.)

Comes the plaintiff in the above styled cause and moves the Court to construe its pre-trial order of February 1, 1956 so as to permit plaintiff to prove, in addition to all other elements of damages allowable in said cause, the following elements of damages specifically enumerated.

1. Loss of profits to plaintiff resulting from work stoppage of October 23 to October 26, 1955.

2. Extra costs incurred by plaintiff in handling transportation around strike-affected area due to work stoppage of October 23 to October 26, 1955.

3. Additional per diem charges on cars belonging to other lines incurred by plaintiff as a direct consequence of the work stoppage of October 23 to October 26, 1955 together with loss of use of its own cars.

Plaintiff files the foregoing motion without taking the position that any of the items charged are properly designated "special damage" but in order to eliminate any question as to the applicability of Rule 9(g) of Federal Rules of Civil Procedure.

In the event the Court deems that plaintiff has prayed for inappropriate relief herein in asking for a construction of said order plaintiff, in the alternative, moves that the Court amplify its said pre-trial order so as to specify as elements of damages provable by it, in addition to all other elements of damages legally provable in said cause, the foregoing items set forth herein.

JAMES A. SIMPSON,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

Of Counsel:
H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

LANGE, SIMPSON, ROBINSON
& SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama.

Certificate of Service.

I hereby certify that a copy of the foregoing motion has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by mailing a copy, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 10 day of August, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing motion has been served upon Hon. Erle Pettus, Jr., attorney for defendants for whom he appears, by mailing a copy, postage prepaid, to his office in the Massey Building, Birmingham, Alabama, this 10 day of August, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing motion has been served upon Hon. Clifford Fulford, attorney for defendant T. A. Kennedy, by mailing a copy, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 10 day of August, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

ORDER AMENDING PRE-TRIAL ORDER OF FEBRUARY 1, 1956.

Filed August 31, 1956.

(Title Omitted.)

This cause, coming on to be heard, was submitted to the Court on the plaintiff's motion to construe the pre-trial order of February 1, 1956. After due consideration of plaintiff's said motion and of oral statement of plaintiff's counsel, the Court is of the opinion that the plaintiff's motion should be granted.

It is, therefore, Ordered, Adjudged and Decreed by the Court that the plaintiff's motion be granted and that the pre-trial order heretofore entered in this cause on February 1, 1956, be and the same is considered as amended in order to allow the plaintiff to prove in addition to the elements of damages allowable in this cause the elements of damages specifically enumerated in paragraphs 1, 2 and 3 of plaintiff's said motion.

Done and Ordered, this 29 day of August, 1956.

H. H. GROOMS,
United States District Judge.

ANSWER AND DEFENSE.

Filed Sept. 5, 1956.

(Title Omitted.)

Come Bruce Barnett, William F. Pennington, Howard Eugene Anderson and Oliver C. Breedlove, sepa-

rately and severally, defendants in the above styled cause by their attorneys and for answer and defense to the complaint as amended set down the following, separately and severally, to-wit:

First Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted.

Second Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted for that complaint fails to allege prior resort to and exhaustion of its administrative remedy by plaintiff.

Third Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted for that said complaint fails to allege that plaintiff has made prior resort to the National Railroad Adjustment Board.

Fourth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, plaintiff was a railroad carrier and the defendants were employees of said plaintiff carrier subject to the Railway Labor Act and defendants aver that the dispute or controversy as alleged in the complaint, as amended, between plaintiff carrier and its employees, defendants herein, is within the primary exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor

Act and that this Court has no jurisdiction of said dispute or controversy until plaintiff has exhausted its remedy before said National Railroad Adjustment Board.

Fifth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, defendants were employees of plaintiff carrier subject to the Railway Labor Act under a collective bargaining agreement, a copy of which is hereto attached and marked Exhibit A and made a part hereof as if fully set forth herein; and defendants aver that on or about, to-wit, October 23, 1955, a shut down or work stoppage occurred on plaintiff carrier's lines in Jefferson County, Alabama, as a spontaneous demonstration by about 2500 employees of said plaintiff carrier and defendants aver, upon information and belief, that such demonstration indicated disapproval of an order published by plaintiff a few days prior thereto abolishing the jobs of holster helpers in plaintiff's Boyles Yard at Birmingham, Alabama, contrary to the provisions of said collective bargaining agreement and contrary to the provisions of the Railway Labor Act, as amended; and defendants aver that the dispute or controversy between plaintiff and defendants is within the primary exclusive jurisdiction of the National Railroad Adjustment Board and this Court has no jurisdiction thereof until plaintiff has exhausted said administrative remedy.

Sixth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, defendants were employees of plaintiff subject to the Railway Labor Act under a collective bargaining agreement, a copy of which is attached hereto as Exhibit A; and defendants aver that on or about, to-wit, October 23, 1955, a shut down or work stoppage occurred on plaintiff's lines (which is the same as the shut down or work stoppage referred to in dismissed Counts One and Two) as a spontaneous demonstration against plaintiff's abolition of certain hostler helper jobs at Birmingham, Alabama, and defendants deny, separately and severally, any participation in causing said work stoppage which defendants are informed was a spontaneous protest against arbitrary unilateral action of plaintiff carrier in abolishing the craft of hostler helpers in Birmingham contrary to the provisions of said collective bargaining agreement and the provisions of the Railway Labor Act, as amended, and defendants aver that this matter is within the exclusive primary jurisdiction of the National Railroad Adjustment Board.

Seventh Defense.

Defendants aver that at all times alleged in the complaint, as amended, defendants were employees of plaintiff which is a common carrier engaged in interstate commerce subject to the Railway Labor Act and defendants aver that the Court has no jurisdiction of this cause for that plaintiff has failed to exhaust its administrative remedy before the National Railroad Adjustment Board under the Railway Labor

Act and defendants, separately and severally, deny each and every allegation of the complaint, as amended, not expressly admitted in this defense.

Eighth Defense.

Said count fails to state a claim upon which relief can be granted on the following grounds, separately and severally, to-wit:

(a) Said count fails to allege an exhaustion of administrative remedies before the National Railroad Adj. Board (NRAB).

(b) Said count fails to allege that there is an existing "no strike" provisions construed by the NRLB to be such.

(c) Said count shows affirmatively that the cause of action declared on is a labor dispute within the primary exclusive jurisdiction of the NRAB under the Railway Labor Act.

(d) Said count shows affirmatively that the defendant employees of plaintiff have the legal right intentionally to interfere with plaintiff's business by a strike or work stoppage and there are no allegations in said count negativing the exercise of such right.

(d) Said count fails to charge that the defendants or any two or more of the defendants entered into any illegal conspiracy against plaintiff.

(f) Said count fails to charge any actionable wrong against the defendants individually or collectively.

(g) Said count fails to charge any individual defendant with the commission of any actionable wrong.

(h) Said count fails to charge the defendants collectively with the commission of any actionable wrong.

(i) Said count fails to charge two or more of the defendants with an actionable conspiracy.

(j) Said count fails to state a cause of action in tort or in contract against the defendants or any of the defendants.

ERLE PETTUS, JR.,
FRANK O. BURGE, JR.,
Attorneys for Defendants,
Bruce Barnett, William F. Pennington, Howard Eugene Anderson and Oliver C. Breedlove.

Of Counsel:
JACKSON, RIVES, PETTUS
& PETERSON.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed, postage prepaid, to James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 4th day of September, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Macy Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants H. M. Baum, A. R. Thomas and R. H. Letchman.

This 4th day of September, 1956

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

AMENDMENT TO COMPLAINT.

Filed Sept. 13, 1956.

(Title Omitted.)

Comes the plaintiff in the above styled cause and amends its complaint as most recently amended by correcting the name of one of the additional defendants added so as to change the name of said defendant from Arthur E. Hicks as the same now appears so that the name of said defendant shall read as follows:

Austin E. Hicks

said complaint remains in all other respects the same in this amendment.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Of Counsel:
H. G. BREETZ,
MESSRS. GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

LANGE, SIMPSON, ROBINSON
& SOMERVILLE,
1003 Frank Nelson Building,
Birmingham, Alabama.

Certificate of Service.

I hereby certify that a copy of the foregoing Amendment to Complaint has been served upon Hon. R. Macey Taylor, by mailing a copy, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 12th day of September, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing Amendment to Complaint has been served upon Hon. Erle Pettus, Jr., by mailing a copy, postage prepaid, to his office in the Massey Building, Birmingham, Alabama, this 12th day of September, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

ANSWER AND DEFENSE.

Filed September 24, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Welden, O. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin, by their attorneys and hereby amend the answer and defense heretofore filed by amending the Eighth Defense to read as hereinafter set forth and by adding th Ninth Defense as hereinafter set forth:

Amended Eighth Defense.

Said count fails to state a claim upon which relief can be granted on the following grounds, separately and severally, to-wit:

(a) Said count fails to allege an exhaustion of administrative remedies before the National Railroad Adjustment Board (NRAB).

(b) Said count fails to allege that there is an existing "no strike" provision construed by the National Railroad Adjustment Board to be such.

(c) Said count shows affirmatively that the cause of action declared on is a labor dispute within the primary exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act.

(d) Said count shows affirmatively that the defendant employees of plaintiff have the legal right intentionally to interfere with plaintiff's business by a strike or work stoppage and there are no allegations in said count negativing the exercise of such right.

(e) Said count fails to charge that the defendants or any two or more of the defendants entered into any illegal conspiracy against plaintiff.

(f) Said count fails to charge any individual defendant with the commission of any actionable wrong.

(g) Said count fails to charge any actionable wrong against the defendants individually or collectively.

(h) Said count fails to charge the defendants collectively with the commission of any actionable wrong.

(i) Said count fails to charge two or more of the defendants with an actionable conspiracy.

(j) Said count fails to state a cause of action in tort or in contract against the defendants or any of the defendants.

Ninth Defense.

Defendants aver that at all times alleged in the amended complaint each defendant, except H. K. Parker, was a member of an association or organization participating or interested in a labor dispute between plaintiff and plaintiff's employees and each

defendant was an employee of plaintiff and defendants deny each and every averment of the amended complaint not herein expressly admitted in this defense.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants,
J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin.

Of Counsel:
JACKSON, RIVES, PETTUS
& PETERSON.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon James A. Simpson, Esq., c°o Messrs. Lange, Simpson, Robinson & Somerville. Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 24 day of September, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, as attorney for defendants H. M. Baum, A. R. Thomas and R. H. Letchman.

This 24 day of September, 1956.

ERLE PETTUS, JR.,
Attorney for said Defendants.

AMENDED ANSWER.

Filed Sept. 24, 1956.

(Title Omitted.)

Now come the defendants, H. M. Baum, A. R. Thomas and R. H. Letchman and amend the answer heretofore filed in this cause by adding thereto an affirmative defense designated as Number 12:

12. The defendants aver that at all times referred to in the complaint as last amended, each of said defendants was a member of an association or organization of employees of the plaintiff participating in or interested in a labor dispute between plaintiff and plaintiff's employees and each of said defendants deny that they caused other employees of

plaintiff by means or threats of force or violence, not to perform their duties with the plaintiff.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for the defendants,
H. M. Baum, A. R.
Thomas and R. H.
Letchman.

Copy served on atty. for plaintiff Sept. 24, 1956.
R. MACEY TAYLOR.

ORDER OVERRULING MOTIONS TO DISMISS FILED BY CERTAIN OF THE DEFENDANTS.

(Title Omitted.)

It appearing to the Court that the answer of the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Welden, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin, filed on September 24, 1956, and that the answer of the defendants, Bruce Barnett, William F. Pennington, Howard Eugene Anderson and Oliver C. Breedlove, filed on September 5, 1956, have asserted various defenses which the Court considers in the nature of motions to dismiss. After due consideration thereof:

It is Ordered, Adjudged and Decreed by the Court that these said defenses, which are in the nature of motions to dismiss, filed on behalf of the above-named defendants be and the same are hereby over-

ruled as to Count Three of the complaint, as last amended.

Done and Ordered, this 25 day of September, 1956.

H. H. GROOMS,
United States District Judge.

Filed February 5, 1957.

In the District Court of the United States, Southern Division, Northern District of Alabama.

Louisville & Nashville Railroad Company, a corporation, Plaintiff,

vs.

J. M. Brown, Jr., et als., Defendants.

Case No 8171 S. Civil Action.

Birmingham, Alabama,
September 24, 1956, et sec.

Before: Hon. H. H. Grooms, Judge, and a Jury.

Appearances:

Messrs. Gibson & Gibson, by Mr. White Gibson, Jr., Messrs. Lange, Simpson, Robinson & Somerville, by Mr. James A. Simpson and Mr. Robert McD Smith, appearing for the Plaintiff.

Messrs. Jackson, Rives, Pettus & Peterson, by Mr. Erle Pettus, Jr. and Mr. F. O. Byrd; and Mr. R. Macey Taylor, appearing for the Defendants.

FLOYD L. FLEMING, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Mr. Fleming, will you state your name to the jury, please?

A. Floyd L. Fleming.

The Court:

Talk out loud.

Q. Sir?

A. F. L. Fleming.

The Court:

That last gentleman down there wants to hear you, so you talk to him and the rest of them will be sure to hear you then.

The Witness:

All right.

Q. What is your business?

A. I am a car repair helper in Louisville, Kentucky.

Q. For what Company?

A. L&N.

Q. How long have you been employed by the L&N Railroad Company?

A. About 16 years.

Q. Did you ever live in Birmingham?

A. Yes, sir.

Q. Were you living in Birmingham last October?
A. Yes, sir.
Q. That is October, 1955?
A. Yes, sir.
Q. What were you doing at that time?
A. I was cut off then, working extra.
Q. You were working on the Extra Board?
A. Yes, sir.
Q. And doing what?
A. Labor, in the yard.
Q. Doing labor in the yard?
A. And hostler helper extra too.
Q. All right. Now, were you a member of the Brotherhood Locomotive Firemen and Enginemen?
A. No, sir, not at that time, no, sir.
Q. Not at that time?
A. No, sir.
Q. Had you ever been?
A. Yes, sir.
Q. Were you a member of any of the other Brotherhoods last October?
A. No, sir, not right then.
Q. You say you were not at that time?
A. No, sir.
Q. Mr. Fleming, were you at a meeting that was held on Sunday afternoon, October 23, at the home of Mr. H. K. Parker?
A. Yes, sir.
Q. Where were you when you first heard about the meeting going to be held?
A. I was out there at the Rex Cafe when I heard about it.
Q. Now then, tell the jury briefly where Rex Cafe is?

A. It is right cross the street in front of the L&N roundhouse.

Q. As you go away from town towards Tarrant, the L&N roundhouse is on which side?

A. On the left hand side, and Rex on the right hand.

Q. And as you go from Rex into the L&N roundhouse you cross I believe that is Vanderbilt Road, isn't it?

A. Yes, sir, Vanderbilt Road, yes, sir.

Q. Then there are two little bridges there, one is a foot bridge and the other is a vehicle bridge, is that right?

A. Yes, sir.

Q. Going into the L&N property?

A. Yes, sir.

Q. And as you get into the L&N property there you come to what offices or buildings?

A. That is the engineers and firemen's washroom.

Q. As you go across this little foot bridge you come to a little brick building, and that is where the engineers and the firemen washed up after they come in off a run?

A. Yes, sir.

Q. Keep their lockers in there, don't they?

A. Yes, sir.

Q. I believe in one end of that building there is the caller's office, is that right?

A. Yes, sir.

Q. He calls the crews?

A. That is the engine dispatcher's office in there.

Q. Engine dispatcher's office?

A. Yes, sir.

Q. And on beyond that I believe is the roundhouse, is it?

A. That's right, yes, sir.

Q. Now you say you were at Rex's place out there on Sunday afternoon?

A. Yes, sir.

Q. About what time was that?

A. Oh, about 2:30 or 3:00 o'clock I imagine.

Q. All right now, who did you see there, Mr. Fleming?

A. I saw McCutcheon.

Q. Mr. McCutcheon?

A. Yes, sir, Shorty Parker.

Q. Mr. H. K. Parker?

A. Yes, sir.

Q. Or Shorty Parker?

A. J. M. Weldon.

Q. J. M. Weldon?

A. Reese Thomas.

Q. Mr. A. R. Thomas or Reese Thomas?

A. Yes, sir.

Q. And who else did you see there?

A. J. B. Otts.

Q. Mr. J. B Otts?

A. Yes, sir.

Q. Now, I am talking about at Rex's place.

A. Yes, sir.

Q. You saw Mr. Otts, J. B. Otts, Jr there then?

A. J. M. Brown

Q. Mr, J. M. Brown, Jr.?

A. Yes, sir.

Q All right. Who else did you see around there that Sunday afternoon?

A. Well, there was a bunch of switchmen, but I don't know their names.

Q. Well, you do recall those that you mentioned though, do you?

A. Yes, sir.

Q. Now then did you have any discussion or any talk with them about a meeting at Shorty Parker's house?

A. No, sir. They told me to come down there to a meeting.

Q. Do you remember who invited you to the meeting?

A. McCutcheon.

Q. Mr. McCutcheon?

A. Yes, sir.

Q. Mr. McCutcheon invited you to come down to Shorty Parker's house?

A. Yes, sir.

Q. How far was it from there to Shorty Parker's house?

A. I guess about a mile from where we was, about a mile I think it was.

Q. About a mile?

A. Yes, sir.

Q. All right. Did you go to Parker's house that afternoon?

A. Yes, sir.

Q. How did you go?

A. In a car.

Q. Whose car?

A. I went with Reese Thomas and McCutcheon.

Q. Who drove the car?

A. Thomas.

Q. Mr. Reese Thomas?

A. Yes, sir.

Q. And Mr. McCutcheon and you went along in his car?

A. Yes, sir.

Q. Now, about what time did you get to Mr. Parker's house that afternoon?

A. About 4:00 o'clock I imagine, 4:15, or something like that.

Q. In the afternoon?

A. Yes, sir.

Q. On Sunday?

A. Yes, sir.

Q. All right. Where did you go when you got there?

A. Went down in the basement. He had a garage apartment and we went down in the basement.

Q. He had a garage apartment?

A. Yes, sir.

Q. That is living quarters on the first floor?

A. Yes, sir.

Q. And then it was built up high off the ground?

A. Yes, sir.

Q. And he had a garage in under the house?

A. That's right, yes, sir.

Q. All right now you went into the garage apartment?

A. Yes, sir.

Q. Or the garage under the house?

A. Yes, sir.

Q. And about how many men gathered in that garage that afternoon?

A. I imagine about 20.

Q. About 20?

A. Yes, sir.

Q. Can you name for us the men who gathered in there about 4:30 that Sunday afternoon?

A. Well, it was—

Q. That is I mean in addition to yourself now?

A. I was there, and McCutcheon.

Q. You say Mr. McCutcheon was there?

A. Yes, sir.

Q. All right.
A. Bill Grissom.
Q. And Mr. Grissom was there?
A. Reese Thomas.
Q. Mr. Reese Thomas was there?
A. Shorty Parker.
Q. Mr. Parker was there?
A. Baum, H. M. Baum.
Q. Mr. Baum was there?
A. M. L. Hall.
Q. Mr. M. L. Hall was there?
A. Ed Weldon.
Q. Was it Ed Weldon or J. M. Weldon?
A. I mean Jim Weldon.
Q. Mr. J. M. Weldon, all right?
A. Mr. Letchman
Q. Mr. Letchman was there?
A. Yes, sir, and Mr. Logan.
Q. Mr. Logan was there?
A. Vann.
Q. Logan and Vann were there?
A. And there was a fellow named Stuart I think was there.
Q. Mr. Stuart?
A. Yes, sir.
Q. All right.
A. And there was a brakeman or a conductor one off of the road. I don't know what his name is.
Q. All right. Can you remember any others offhand? I know it is hard to sit there on the witness stand under the excitement of being brought into Court and mention all of those names. But can you recall any others?
A. Howard Southerland.

Q. Mr. Southerland was there?
A. Anderson.

Mr. Pettus:
What was that?

Mr. Simpson:
Mr. Anderson.

A. Anderson.
Q. Mr. Anderson was there?
A. Yes, sir.
Q. All right.
A. That's about all I remember.
Q. These are the gentlemen that you see sitting here in this Courtroom, are they?
A. Yes, sir.
Q. The Defendants in this case?
A. Yes, sir.
Q. Bearing those names?
A. Yes, sir.

Mr. Simpson:
If I may, Your Honor, may I ask him if he saw certain individuals there? I don't want to lead him, but just to complete the list.

The Court:
You can ask him whether or not there were certain individuals there.

Mr. Simpson:
All right.

Q. I will ask you whether or not you saw Mr. J. M. Otts, Jr. there?

A. J. B. Otts?

Q Yes, J B. Otts, Jr. I mean

A. Yes, I have named him.

Q. Yes. I know you did. You saw Mr. Otts—I mean Mr. Brown, J. M. Brown, Jr., did you see him there?

A. Yes, sir.

Q. Was he there?

A. Yes, sir.

Q. Did you see Mr. Sutterlin there, R. A. Sutterlin?

A. No, sir, I don't remember seeing him there.

Q. You say you don't remember seeing him there?

A. No, sir.

Q. Did you see Mr. Kennedy there?

A. Yes, sir, I remember him.

Q. You saw Mr. Kennedy there?

A. Yes, sir.

Q. All right. Now, I will ask you whether or not you heard any of the men make any statement about what they had met there for that afternoon?

A. Yes, sir, they met there, they pulled off some hostler helpers jobs, and they met there to discuss it.

Mr. Pettus:

Your Honor, I have trouble hearing the witness. If he can talk up, I would like to hear what he said.

The Court:

Will you speak up? They can't hear you.

A. They had a discussion, they pulled off some helping jobs and they were discussing it.

Q. They were discussing the pulling off of the hostler helpers jobs?

A. Yes, sir.

Q. Outside hostler helpers?

A. That's right.

Q. Three of them?

A. Yes, sir.

Q. All right. Did you hear the Defendant, Reese Thomas, make a statement about what ought to be done?

A. Yes, sir.

Q. What did Mr. Thomas say?

A. He said we ought to pull the pin and get it over with.

Q. Now then, Mr. Fleming, in railroad language what does "Pull the pin" mean?

Mr. Taylor:
We object to that.

Q. What did you understand it to mean?

The Court:
Overruled.

Mr. Pettus:
We except.

A. That means quit right there, pull what they—

Mr. Taylor:
I can't hear what he said.

The Court:
Speak up.

A. That means pull the strike, what they were figuring on.

Mr. Pettus:

Now, we move to exclude that as not responsive.

The Court:

I sustain the motion. That is excluded, gentlemen.

Q. What did you understand "Pulling the pin" to mean?

A. That means to stop work.

Q. That means to stop work?

A. Yes, sir.

Q. All right. Mr. Reese Thomas said "Its time to pull the pin", you say?

A. Yes, sir.

Q. And did anyone then after that—first, did anybody act as sort of Chairman or stand up?

A. No, sir, everybody was just talking.

Q. Everybody was just talking around generally?

A. Yes, sir.

Q. Did somebody call for a show of hands on the question of whether or not they would "Pull the pin" then or not?

A. Yes, sir.

Q. Now then did they have a show of hands?

A. Yes, sir.

Q. What was it, what was the question they were holding up hands on?

A. They asked those in favor of it, everybody held up their hands.

Q. Everybody in favor of the strike, or "Pulling the pin", hold up their hand?

A. That's right, yes, sir.

Q. Now then can you tell me whether or not there were some people in there who did not hold up their hands?

A. Yes, sir, a few; one or two I know.

Q. All right, tell us those who did not hold up their hands.

A. I think it was Logan.

Q. Logan?

A. Yes, sir.

Q. All right.

A. Vann, I think it was Vann.

Q. Vann?

A. Yes, sir.

Q. All right.

A. Kennedy I think.

Q. Kennedy didn't hold up his hand?

A. No, sir.

Q. Did you hold up your hand?

A. No, sir.

Q. You were not, of course—

A. I was not involved in it.

Q. I see.

Mr. Pettus:

I didn't understand that last answer.

Mr. Simpson:

He said he wasn't involved in it.

Q. Did you see anybody else that you can now recall who did not hold up his hand?

A. No, sir.

Q. It is your best recollection, or is it your best recollection then that they all held up their hands except the men you mentioned?

A. That's right, yes, sir.

Q. Now then what was said about when they would put this—where they would meet?

Mr. Taylor:

If the Court please, can we ask Mr. Simpson not to lead the witness quite so strong?

The Court:

All right. Don't lead the witness. That is leading.

Mr. Simpson:

I will try not to, Your Honor.

Q. Was there anything said about where they would meet then after that?

A. Yes, sir, they were to meet down at Rex's Cafe about 8:30 that night.

Q. Now, who suggested that, if you remember?

A. I don't know who suggested that.

Q. You don't remember who suggested that?

A. No, sir, but that was where they were supposed to meet at.

Q. Did you hear that statement made there in the meeting?

A. Yes, sir.

Q. Rex's Cafe was the one you had just come from up to the meeting?

A. That's right.

Q. That is the one down at the roundhouse entrance, entrance to the roundhouse?

A. Yes, sir.

Q. Now what time did they say they would meet down there?

A. 8:30.

Q. At 8:30?

A. Yes, sir.

Q. Now then was there anything said there in that meeting, and if so what, about the question of picketing?

A. Yes, sir, they took names of who was going on picket duty.

Q. Who called for that? Did anyone ask that everybody who would picket hold up his hand?

A. No, sir, it wasn't that.

Q. How were the pickets selected?

A. They just wrote their names down on a paper.

Q. Now who was it that took down the list of pickets?

A. I think it was Anderson.

Q. Is that your best recollection, that Mr. Anderson did that?

A. Yes, sir.

Q. He took the list of those who volunteered for picket service?

A. That's right.

Q. Did you volunteer for picket service?

A. No, sir.

Q. Did anyone help Mr. Anderson in taking down the list of those who were going to picket?

A. I think Jim Brown did.

Mr. Taylor:

We object to that and move to exclude it if Your Honor please.

Q. What is your best recollection?

Mr. Taylor:

We object to that.

A. I think Jim Brown.

Mr. Taylor:
We object to anybody helping him do a certain thing.

The Court:
Overrule the objection. Don't ask leading questions.

Mr. Simpson:
Yes, sir.

The Court:
Is that your best knowledge?

A. Yes, sir.

Mr. Pettus:
We except.

Mr. Simpson:
I will state that again. The objection may have interfered with the people understanding.

Q. What did you say Mr. Brown did, if anything?
A. I think Brown helped Anderson take names, yes, sir.
Q. Take the names of whom now?
A. Men that were there.
Q. Men that were going to do what, if anything?
A. Picket duty.
Q. Men that were going to do picket duty?
A. Yes, sir.
Q. It is now your best recollection Mr. Anderson and Mr. Borwn were the men who took down those names?
A. Yes, sir.

Q. What time were you due to go back to work?
A. I wasn't working, I was cut off then.
Q. You were off?
A. I was cut off.
Q. Yes, that's right.
A. Yes, sir.
Q. You were on the Extra Board?
A. Yes, sir.
Q. Did you go back at anytime to see if there was any work available for you immediately after that Sunday night?
A. Yes. I went back the next day, the next morning.
Q. Do you know of your own knowledge what happened down there at the Boyles Yards at 9:00 o'clock on that Sunday night?
A. Yes, sir.
Q. All right, what did happen down there that night Mr. Fleming?

Mr. Pettus:
We object to that unless he was there, may it please the Court.

Mr. Simpson:
All right.

Q. Were you there, Mr. Fleming?
A. Yes, sir.

The Court:
I overrule the objection.

Q. All right, just tell us what happened, Mr. Fleming.
A. Well, it stopped, all the work, that's all.

Q. That was at the hour that you say, 9:00 o'clock?
A. 9:00 o'clock, yes, sir.
Q. Did you see how that was performed, how they did that?
A. No, sir, I wasn't in the Yard.
Q. You were not inside of the Yard?
A. No, sir.
Q. Where were you?
A. I was over there at Rex's Cafe.
Q. What happened around 9:00 o'clock that you did see? Now I understand you can only say what you saw yourself.
A. I just seen the men come out, coming off their job, and coming out.
Q. You say you saw the men coming off their jobs and coming out there then?
A. Yes, sir.
Q. Were they leaving the L&N property?
A. Yes, sir.
Q. About how many did you see coming out of that Yard at that entrance where you were that Sunday night about 9:00 o'clock?
A. I saw about 20 or 25.
Q. Did you know them?
A. Yes, sir, I knowed some of them.
Q. Were they L&N employees or not?
A. Yes, sir.
Q. Did you know what sort of work they did in the Yard?
A. Well, some of them was switchmen, some was engineers, brakemen, machinists, and electricians.
Q. You say you yourself saw some 25 come out on that Sunday night about 9:00 o'clock?
A. Yes, sir.
Q. Were they in their work clothes?

A. No, sir.

Q. Had they changed their clothes?

A. Yes, sir, they changed clothes, some of them had.

Q. Changed clothes and came out?

A. Yes, sir.

Q. Did you go back there at any time after that Sunday night?

A. I went back next morning.

Q. What did you see Monday morning?

A. Nothing, only a gang of men around there talking on the outside there.

Q. About how many men would you say were around there then?

A. About 30 or 40.

Q. Did anyone ask you to do picket duty at that time?

A. Yes, sir.

Q. Who asked you to do picket duty?

A. Breedlove.

Q. Mr. O. C. Breedlove?

A. Yes, sir.

Q. What did he say to you?

A. He wanted me to go downtown at the Passenger Station and do picket duty down there.

Q. That was down here in Birmingham?

A. Yes, sir, down in town.

Q. At the L&N Station?

A. Yes, sir.

Q. Did you hear him ask anyone else to do picket duty?

A. Yes, sir.

Q. Who else did he ask to do picket duty?

A. I heard him ask Ed Dougherty.

Q. Ed Dougherty?

A. Yes, sir.

Q. Did you yourself do any picket duty?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Mr. Fleming, were you personally afraid to go in the L&N Yards out there and offer to work after this?

A. I—

Mr. Pettus:

We object to that, if Your Honor please. It calls for an undisclosed mental operation, incompetent, irrelevant, and immaterial.

The Court:

I sustain the objection.

Mr. Simpson:

May it please the Court, may I go in and show his knowledge of the background of violence?

Mr. Pettus:

We object to that statement.

Mr. Simpson:

As a basis for this question?

Mr. Pettus:

We object to any statement of counsel without bringing the witnesses in. If he is going to argue, we would like the jury excused.

The Court:

I am not sure whether that is admissible or not. We will pass it for this time. I will reserve my ruling on it.

Mr. Simpson:

All right. You may take the witness.

Cross Examination.

By Mr. Pettus:

Q. Whose car was that that you went to Parker's house in, Mr. Fleming?

A. Mr. Thomas.

Q. Mr. Thomas?

A. Yes.

Q. And who else was in that automobile?

A. McCutcheon.

Q. McCutcheon?

A. Yes, sir.

Q. Was there anybody else in there?

A. No, sir.

Q. Just the three of you?

A. Three of us.

Q. What kind of an automobile was it?

A. It was a coupe, convertible; I don't know what make it was.

Q. You don't know what make it was?

A. No, sir.

Q. What time did you leave Rex's Barbecue?

A. It was about 4:15 I imagine.

Q. Now, how long before you left Rex's Barbecue was it that you saw Parker there at Rex's Barbecue that afternoon?

A. It was about an hour.

Q. About an hour?
A. Yes, sir.
Q. Then he had left?
A. Yes, sir.
Q. How about Mr. Weldon?
A. He was at Rex, yes, sir.
Q. Was he at Rex when you left?
A. We all went down there together.
Q. Was he in the same car now?
A. No, sir.
Q. You just testified a minute ago—
A. No, sir, but we all left together, the whole bunch.
Q. Was he in a different car?
A. Yes, sir.
Q. How about Mr. Thomas, he was with you, wasn't he?
A. Yes, sir.
Q. And what time did you see Mr. Otts at the Rex's Barbecue that afternoon?
A. About 3:00 o'clock I imagine.
Q. What time?
A. About 3:00.
Q. You are positive about that?
A. Yes, sir.
Q. At 3:00 o'clock that afternoon you saw Mr. J. B. Otts? Stand up, Mr. Otts. You are talking about this gentleman there (indicating)?
A. Yes, sir.
Q. You say you saw him at Rex's Barbecue that afternoon at 3:00 o'clock, is that right?
A. That's right.
Q. Was he in street clothes or work clothes?
A. Street clothes.

Q. In street clothes. Was he dressed like he is now?

A. No, sir.

Q. How was he dressed?

A. He had on pants and a shirt.

Q. He had on pants and a shirt?

A. Yes, sir.

Q. But he didn't have on his work clothes?

A. No, sir.

Q. You saw him at 3:00 o'clock that afternoon?

A. Yes, sir.

Q. How long did Mr. Otis stay there?

A. He went, he left when the rest of them did, going down to Parker's.

Q. In other words, he was about Rex's Barbecue from 3:00 to 4:00?

A. I imagine now.

Q. Then you went over to Parker's house, did you?

A. Yes, sir.

Q. Do you have a clear recollection of all those, these names that Mr. Simpson has called out as being there, do you remember that they were there at Parker's house yourself?

A. Yes, sir.

Q. You do?

A. Yes, sir.

Q. You are positive they were all there?

A. Yes, sir.

Mr. Simpson:

May it please the Court, I don't want to interrupt the gentleman, but there were only three names that I called out. The rest the gentleman called out himself.

Mr. Pettus:
I was asking about all three of those names.

Mr. Simpson:
All right.

Q. You are sure about all three of them, aren't you? You are sure all three of those gentlemen that he called out were there, is that right?
A. (No response.)
Q. You are not sure?
A. No, sir, I am not sure.
Q. You are not sure about it?
A. No, sir.
Q. Now which of these names are you not sure about, Mr. Grissom? Which ones are you not sure about?

Mr. Simpson:
Mr. Fleming.

Mr. Pettus:
I mean Mr. Fleming.

Q. Which ones are you not sure about?
A. (No response.)
Q. We want to know the names of those that you are sure were at that meeting.

The Court:
That was Logan, Vann, and Kennedy?

The Witness:
Logan, Vann, and—

Q. You are not sure that they were there, are you?

A. Logan was there, I know. I know him.

Q. You know Logan was there, is that right?

A. Yes, sir.

Q. You are positive Logan was there?

A. Yes, sir.

Q. You are not positive that Vann was there?

A. No, sir.

Q. You don't recall whether he was there or not?

A. I am not positive, no, sir.

Q. You are not positive?

A. No, sir.

Q. Mr. Kennedy, are you sure about him or not?

A. No, sir.

Q. In other words, did you talk to Kennedy there?

A. No, sir.

Q. And you do not recall whether Mr. Kennedy was there or not, is that right?

A. That's right.

Q. Now, were you there during the whole meeting?

A. I left—some was right—about half of them was there when I left.

Q. What's that?

A. About half of them was in the building when I left. Some of them had done gone.

Q. Some of them had gone?

A. Yes, some were still there.

Q. It was a meeting that was pretty informal, wasn't it? Everybody just standing around talking?

A. Yes, sir.

Q. Prior to that meeting, Mr. Fleming, had you seen a notice like this on the bulletin board (indicating), or had anybody told you anything like that was on the board?

A. Yes, sir, I seen it.
Q. You had seen that notice then?
A. Yes, sir.

Mr. Pettus:
We ask this be marked Defendants' Exhibit 1 for identification.

(Defendants' Exhibit No. 1 was marked for identification.)

Mr. Pettus:
I would like it back.

Q. Mr. Fleming, at the time that this notice was published were you doing outside hostler helpers work from time to time?
A. Yes, sir.
Q. You were not employed steadily by the Railroad, is that right?
A. No, sir, just on the Extra Board.
Q. You were on the Extra Board?
A. Yes, sir.
Q. At that time how much work were you getting a month, about?
A. About three or four days a month.
Q. About three or four days a month?
A. Yes, sir.
Q. Now did that continue through October? Did that continue, is that how much you were working through October, three or four days a month?
A. I was working in the back shop at that time, extra, as a laborer.
Q. Just as a laborer?
A. Yes, sir.

Q. Were you working full time up there?
A. No, sir, extra.
Q. As extra up there?
A. Yes, sir.
Q. When did you go to Louisville?
A. May 7.
Q. May 7?
A. Yes, sir.
Q. Of this year, 1956?
A. Yes, sir.
Q. Now while you were in Birmingham did you continue to work for the L&N?
A. No, sir, I was cut off.
Q. You were cut off?
A. Yes, sir.
Q. When were you cut off?
A. In—
Q. In January?
A. I was cut off in October.
Q. Cut off in October?
A. Yes, sir.
Q. Did you do any more work for the L&N here after you were cut off?
A. Yes, I done a little extra work.
Q. A little extra work?
A. Yes, sir.
Q. But say from January until May, that is when you went to Louisville, did you do any work?
A. No, I didn't do a thing.
Q. You didn't do anything?
A. No, sir.
Q. When did you talk to this ex-FBI Agent, Mr. Robey, for the L&N?
A. I don't know what date that was.
Q. That was some time in the spring, wasn't it?

A. Yes, sir, it was in the spring, but I don't know what date.

Q. Now you are working full time up in Louisville, aren't you?

A. I am now, yes, sir.

Q. Did you give a statement to Mr. Robey about this matter that you have testified to here, today, about?

A. Yes.

Q. Now after you gave him that statement did he tell you he was employed by the L&N Railroad Company, when you gave him that statement?

A. Yes, sir, he told me.

Q. He told you that he was?

A. Yes, sir.

Q. Now after you gave him that statement you were transferred to Louisville and are working full time up there now, is that correct?

A. That's right.

Q. Now in this notice, when they abolished the outside hostler helpers jobs—your seniority doesn't date back to 1922, does it?

A. No, sir.

Q. Or 1925?

A. No, sir.

Q. Or 1941?

A. Yes, sir.

Q. Is that right?

A. 1941.

Q. Is that when you were employed?

A. Yes, sir.

Q. Did McCutcheon rank you on the seniority list?

A. Yes, sir.

Q. He was ahead of you?

A. He was ahead of me, yes, sir.

Q. So then all of these men that were doing hostler helping work at that time, then ranked you on the seniority list?

A. Yes, all of them got age on me, yes, sir.

Q. They had age on you, and you only did work when they didn't work?

A. That's right.

Q. Now, Mr. Fleming, you are living at Louisville now?

A. Yes, sir.

Q. And all of your expenses are being taken care of by the L&N on this trip down here, aren't they?

A. I guess so, yes, sir.

Q. You assume that they are?

A. I assume that they are, yes, sir.

Q. Was your testimony refreshed this morning at a meeting at the L&N lawyer's office?

A. Yes, sir.

Mr. Pettus:

It was. That's all.

Re-Direct Examination.

By Mr. Simpson:

Q. To keep the record straight, where did you talk to me this morning, at my office or in the Courthouse?

A. No, I mean right out here in this office (indicating).

Q. The gentleman asked you about in my office.

A. I mean I talked to him out here in this office, right here in this building.

Q. Was there anybody present except you and me?

A. No, sir.

Q. There wasn't any meeting of any kind, was there?

A. No, sir, wasn't any meeting.

Q. I asked you what your testimony was going to be and you told me?

A. That's right.

Q. Right down the hall?

A. Second office here.

Mr. Simpson:

That's all.

Re-Cross Examination.

By Mr. Pettus:

Q. Mr. Fleming, did you attend a meeting at 8:00 o'clock at Mr. Gibson's office?

A. No, sir.

Q. You did attend that meeting this morning?

A. I met him up there.

Q. You met him up there in Mr. Gibson's office?

A. And he brought me down here, yes, sir.

Mr. Pettus:

I see. All right.

Re-Direct Examination.

By Mr. Simpson:

Q. That was the place where you people from out of town were told to come to?

A. That's what this paper says, meet at 8:00 o'clock at his office.

Q. All right. Now was there any discussion of this case or anything of that kind up there at that time?
A. No, sir, not a thing in the world.

Mr. Simpson:
Well, all right. That's all.

The Court:
All right, gentlemen. We are going to recess for lunch at this time. During the trial of this case do not talk about the case to anybody or talk about it among yourselves or permit anybody to talk to you about it. That warning will hold good all during the trial and during all the recesses. So, be back at 1:35.

(Whereupon, at 12:35 p. m. a recess was taken until 1:35 p. m., of the same day.)

Afternoon Session, 1:35 P. M.

The Court:
Call your next witness.

Mr. Simpson:
Mr. Edwards.

F. M. EDWARDS, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. State your name to the jury, Mr. Edwards.
A. Sir?

Q. State your name to the jury.
A. F. M. Edwards.
Q. Fred M. Edwards?
A. Fred M., yes, sir.
Q Where do you live?
A. Decatur.
Q. Did you ever live in Birmingham?
A. Yes, sir.
Q. How long since you lived in Birmingham?
A. Well, I think I went to Decatur along about '43 or '44, I am not certain.
Q. 1943 or 1944?
A. Yes, sir.
Q. Up to that time you lived here for a while?
A. Yes, sir.
Q. You have lived in Decatur continuously since '43 or '44?
A. Something like that, yes, sir.
Q. Who do you work for?
A. L&N.
Q. What do you do for the L&N?
A. Conductor.
Q. Freight or passenger?
A. Freight.
Q. Are you a member of any Railroad Brotherhood? If so, which Union?
A. I belong to the Brotherhood of Railroad Trainmen and Order of Railway Conductors.
Q. You belong to both those Unions?
A. Yes, sir.
Q. Did you belong to them in October, of last year?
A. Yes, sir.
Q. Were you in Birmingham on October 23, which was a Sunday, of 1955, that is last year?

A. Well, I guess I was.

Q. Do you remember when this wildcat strike occurred?

A. I don't remember the date.

Q. Were you in Birmingham on the day that this wildcat strike in October, of 1955 occurred?

Mr. Pettus:

We object to that terminology.

Mr. Simpson:

Whatever sort of strike you want to call it.

Q. Were you here?

A. I was here when they had the walkout.

Q. Walkout?

A. Yes, sir.

Q. Called it walkout?

A. Whatever it was, I was here that day.

Q. On that Sunday?

A. Yes, sir.

Q. It began on Sunday, didn't it?

A. That's what they say.

Q. All right, Mr. Edwards, where were you on that Sunday afternoon? You were living in Decatur at that time?

A. Yes, sir.

Q. Had you come down here on a run?

A. Yes, sir, I came in—the job I am on I come in one day and go right back out next morning to Nashville.

Q. I don't want to be leading you, but had you come in on your job that Sunday?

A. Yes, sir.

Q. What time did you get here?

A. It was early, about 1:30 or 2:00 or something like that.

Q. Where did you go when you got off your run and left the premises of the Company?

A. I went over to Boyles, I reckon you call it there, over there to the cafe, I believe you call it Rex.

Q. Rex's Barbecue?

A. Yes, sir.

Q. About what time were you around Rex's place that Sunday?

A. It must have been—it was after 3:00 o'clock or later.

Q. After 3:00?

A. Yes, sir.

The Court:

Now, was that in the afternoon?

The Witness:

Yes, sir.

Q. Did you see anybody there that you recall now?

A. Well, no, I didn't see nobody—two or three in there, but I didn't know them.

Q. You don't recall who they were?

A. No, sir.

Q. Did you leave Rex that afternoon?

A. Yes, sir.

Q. Where did you go?

A. I went to Kyle Parker's house.

Q. Mr. H. K. Parker?

A. Yes, Kyle is all I know, Kyle Parker.

Q. He is one of the Defendants. You see him sitting over there, do you?

A. Yes, sir.

Q. Ordinarily he is referred to among his friends as "Shorty" Parker, isn't he?

A. That's right.

Q. How long have you known Mr. Parker?

A. Well, I have been knowing him quite a while. I have known him since he was—away before he started railroading. I knew his father, I worked with his father, his father was an engineer. I have been knowing the boy a long time, I'll say back in the twenties.

Q. How did you get from Rex over to Mr. Parker's house?

A. I went over there with Jim Weldon.

Q. Now, is that Mr. J. M. Weldon?

A. Yes, sir.

Q. How long have you known Mr. Weldon?

A. Well, I've knowed the boy I guess—I have knowed his people, I knowed him when he was a little fellow. I knowed his daddy and his brothers. I didn't know him so well, only just seeing the boy. I have seen him when he was a little fellow, then when he come in there and went on the road, I think he come out of the Army or something. I didn't see the boy until I will say 3 or 4 years ago.

Q. You knew him well though?

A. Oh, I knew him when he was a little fellow, knowed all of his folks.

Q. You say you went over to Parker's house with Mr. Weldon?

A. Yes, sir.

Q. And did you two walk, or how did you go?

A. No, I went in his car.

Q. In his car with Mr. Weldon?

A. Yes, sir.

Q. Did anybody invite you to come to the meeting?

A. No, sir.

Q. Had you heard that there was going to be a meeting over there before you went over?

A. Yes, sir.

Q. Now tell us what was the first you heard about it, please, sir, Mr. Edwards?

A. The first I heard of it was some brakeman told me that he heard that there was going to be a meeting, the brakeman that come in with me.

Q. Your brakeman?

A. Yes, sir.

Q. What did he tell you?

A. He said "Fred, I heard that they are talking about a walkout or something", he said "They cut them hostlers pay", or something to that effect; I don't know. And he says "They are talking about they are going to do something about it."

Q. Did he tell you that there was a meeting that Sunday afternoon?

A. No, he didn't know there was a meeting I don't reckon. He didn't tell me.

Q. Did you hear anything about the meeting before you got to Rex's Barbecue?

A. No, sir.

Q. Who told you there that there was going to be a meeting?

A. That boy that was in there, Rollins boy, he said he heard that there was going to be a meeting, but he didn't know for certain.

Q. How come you to go over there?

A. Over to the Rex's?

Q. No, over to Mr. Parker's house.

A. - Well, I knew all—I knew this boy, I knew Jim, Jim come by there. I wanted to try to find out what they were going to do. If there was going to be a walkout or anything like that I was going home.

Q. You went over on your own initiative?

A. Yes, sir, nobody asked me. I went myself.

Q. When you got to Mr. Parker's place were you and Mr. Weldon the first ones to get there?

A. Oh, no, when we got there there was a crowd there. I don't remember of anybody coming after we got there.

Q. I see. When you got there where was the crowd?

A. They was down in the, I guess you would call it a basement, garage room.

Q. They were down in the basement of Mr. Parker's house?

A. Yes, sir, in the basement.

Q. Now, did you go in the meeting?

A. Yes, sir.

Q. Who did you see in the meeting that you now recall that you then knew?

A. Well, I saw Parker, Kyle, and I saw Mr. Jim—of course, I went down there with Jim.

Q. That is Mr. Weldon?

A. I seen J. B. Otts.

Q. You saw Mr. Otts, the gentleman sitting right over there?

A. Yes, sir.

Q. In the middle?

A. And I saw Reese Thomas.

Q. Reese Thomas?

A. Yes, sir, there was several more men there but I didn't recognize them.

Q. Yes, but you do recall having seen Mr. Otts, Mr. Seese Thomas, and, of course, Mr. Weldon and Mr. Parker and yourself?

A. Yes, sir, I saw them.

Q. What was discussed in the meeting?

A. Well, I just—I never heard too much. I talked to Parker and we talked about different things. Now he was showing me some dog kennels that he had built under there.

Q. Were the dog kennels in the garage or outside of the garage?

A. They was in the garage.

Q. They were in the garage?

A. He had it fixed where he could watch them.

Q. We are not interested, of course, in the dog kennels.

A. Well, you asked me what we was talking about.

Q. All right.

A. I was trying to tell you.

Q. All right. After you got through talking about the dog kennels, how long did that meeting last?

A. Well, I should think it broke up around a little after 5:00. I imagine it was 4:00 or later when we got down there. I know that I caught the 6:30 car out there at the Yards, streetcar or bus. I come back down there, and I had to get my bag, and I caught that bus, but I imagine we left down there some time after 5:00.

Q. Some time after 5:00?

A. Yes, sir.

Q. Did you take any part by voting on anything in the meeting?

A. No, sir, I didn't vote. I didn't see nobody vote.

Q. You didn't take any part in the meeting at all?

A. No, no more than just being there.

Q. Will you tell the jury whether you can tell us what any particular man said in that meeting?

A. Well, I never heard—they was talking, different ones was talking, you know.

Q. Well, now, what I want to know is can you tell us what any particular man said? If so, we would appreciate your doing it.

A. Well—

Q. That is in the meeting?

A. No, I never heard—well, I heard Mr. Otts say something. He was talking to some of the fellows there something about, they was talking about they didn't think the Railroad had done right about cutting these men's wages, they ought to cut the jobs off if they wanted to do it, or something to that effect. He said "If we do anything, we are going to kind of be on our own", or something to that effect. Now, that's what I understood him to say.

Q. That is Mr. J. B. Otts?

A. Yes, sir.

Q. Whom you knew at the time?

A. I have been knowing him a good while; I have worked with him.

Q. "And wha. we do is going to be on our own"?

A. Yes, sir, now that's the way I understood it.

Q. All right. Now did you hear anybody get up there and—this is probably leading. I won't ask you that. You have told us all you can remember that was said in the meeting, is that right?

A. Yes, sir, I never—

Q. All right, we won't belabor that. I will ask you one more question. Do you now recall any particular statement that was made by any other man except

the one you have told us about by Mr. Otts inside of the meeting?

A. No, sir.

Q. All right, we will pass on.

A. No, sir.

Q. Who did you leave the meeting with?

A. Jim. He carried me back down there where I got my things.

Q. All right. Now did you discuss with him what had occurred? Did you have a discussion with Mr. J. M. Weldon leaving there?

A. Yes. When we started back I asked Jim, I says "Jim, what do you think its going to do?" Well, he says "I don't know", or something to that effect. He says "It looked like we are going to walk out tonight or tomorrow", and he says to me, says, "Fred, you belong to the Trainmen, don't you?" I said "Yes, sir." Well, he says "You get hold of your Local Chairman and tell him."

Q. And tell him what?

A. Well, that's what he said. I guess they figured on a walkout. I told him, I says "Jim, I don't know his number, and I would have to—I ain't got much time to catch this train if I am going home, and I am not going to call him", because I didn't know the man's number. That is the Trainmen's Local Chairman, Mr. Price.

Q. Mr. Price?

A. I didn't even know where he lived.

Q. Mr. Price was your Local Chairman here in Birmingham?

A. Of the Trainmen, yes, sir.

Q. You are a member of the Trainmen?

A. Yes, sir.

Q. Mr. Weldon asked you to get hold of the Chairman of the Trainmen and tell him that they were coming out?

A. Well, he said—he didn't—he just asked me if I would do it.

The Court:

Who was this? What man was this, Mr. Weldon?

The Witness:

Yes, sir.

Mr. Simpson:

Mr. Weldon, one of the Defendants, yes, sir.

A. He just left that up to me, and I told him, says, "No, Jim, I don't know his number." He didn't say no more about it. He told me, says "I'll carry you on down to the train", or something, and I said "No, I've got to go over there and get my bag." My bag was on the caboose. I had done packed my little old bag because I had done laid off.

Q. You laid off?

A. When I got in I laid off.

Q. You were sick?

A. No, I got mad and laid off. It didn't have nothing to do with the firemen. I laid off up at the Yard Office.

Q. I see. It had nothing to do with this situation we are talking about you say?

A. No, sir, not a thing.

Q. He told you they might be coming out that night?

A. Yes, sir.

Q. What time that night did he say they might be coming out?

A. Well, I don't know what time he said it looked like they might be coming out. I said "Jim, what do you think they are going to do, what are you going to do?" He said "I don't know", or something, "We are trying to"—"Looks like we'll come out tonight or in the morning."

Q. Did he say what time that night, if they came out that night?

A. I think he said 9:00 o'clock.

Q 9:00 o'clock?

A. Yes, sir.

Mr. Simpson:

All right, you can have the witness.

The Witness:

I am not sure of that, I'm thinking it was 9:00 o'clock.

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Was there any definite discussion for the next day had with Mr. Weldon?

A. Sir?

Q. He just said they might come out that night or in the morning?

A. Yes, sir.

Q. That is Mr. Jim Weldon, one of the Defendants in the case?

A. Yes, sir.

Q. Before you had gotten to that meeting at Mr. Parker's house you mentioned having a discussion with a brakeman, in which he said it looked like there was going to be a walkout, didn't he?

A. Yes, sir.

Q. Now the brakemen, is that the same or a different craft from the firemen?

A. Well, he is—yes, he is a trainman, see?

Q. He is a trainman?

A. Yes, sir.

Q. In other words, you are a trainman, and you are in a different craft than the firemen, aren't you?

A. Oh, yes, yes.

Q. You are in a different Union from the one Mr. Weldon is in?

A. Yes, sir.

Q. Had you heard, before you came down to Birmingham that day, about the abolishment of these hostler helpers jobs, of the outside hostler helpers job?

A. No, it was all news to me.

Q. It was all news to you?

A. It sure was.

Q. In other words, when this brakeman told you there that there might be a walkout, that's the first you heard of it?

A. That's the first I knew of it, and that was I'll say 2:30 in the evening, about 2:00 or 2:30.

Q. That is the afternoon of Sunday, is it?

A. That's right.

Q. Of October 23?

A. I didn't know nothing about it.

Mr. Pettus:

That's all.

Mr. Simpson:
That's all.

The Court:
Come down.

Mr. Simpson:
May we ask counsel and the Court if this witness may be excused?

The Court:
Unless there is objection he will be excused.

(Witness excused.)

Mr. Simpson:
Call Mr. Kennedy.

T. A. KENNEDY, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:
Q. Is this Mr. T. A. Kennedy?
A. Yes, sir.
Q. Where do you live, Mr. Kennedy?
A. 4158 51st Avenue North, Birmingham.
Q. Who do you work for, please, sir?
A. L&N Railroad.
Q. In what capacity?
A. Locomotive fireman.

Q. Were you working for the L&N Railroad Company in October, of 1955?

A. Yes, sir.

Q. Were you a fireman then too?

A. Yes, sir.

Q. Did you work generally as a fireman out of Birmingham or on some Division?

A. On what is known as the Alabama Mineral Division Seniority District.

Q. Is that the same Seniority District or list as for example Mr. Otts and Mr. Thomas, or is that a different one?

A. No, sir, that is a different Seniority District altogether.

Q. Were you at that time, in October, 1955, a member of the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. Did you hold any official position with that Union?

A. Local Chairman for the Firemen's Organization.

Q. I believe you said there were two Divisions?

A. There is three, yes, sir.

Q. Three?

A. Three different Seniority Districts in Birmingham.

Q. And were you the Local Chairman over all three?

A. No, sir, just on the Alabama Mineral Division.

Q. Do you remember the occasion in October, beginning on October 23, a Sunday, in 1955, when there occurred a wildcat strike, a walkout, or some kind of work stoppage at Boyles?

A. Yes, sir.

Q. Had you heard prior to the time that the stoppage occurred that there was some probability or possibility that one would occur.

A. Yes, sir, I had.

Q. Tell the jury where and when you first heard that?

A. I came out of Anniston on Saturday morning, and while I was in Anniston, and also at Gadsden, I heard that there was a wildcat strike in progress in Birmingham at that time.

Q. Did you run from Gadsden on into Birmingham?

A. Yes, sir.

Q. Was there any strike going on at that time?

A. No, sir, there was not.

Q. When you got there?

A. There was not.

Q. What time did you arrive in Birmingham?

A. Relieved at 10:30 p. m.

Q. Saturday night?

A. Saturday night.

Q. All right, sir. Now did you attend a meeting at the home of H. K. Parker on Sunday afternoon?

A. Yes, sir.

Q. Who invited you to go there?

A. Mr. McCutcheon.

Q. Is that C. L. McCutcheon, one of the Defendants in the case?

A. Yes, sir.

Q. Had you discussed the news that you had received about the wildcat strike or whatever it was, with anyone prior to the time you went to that meeting?

A. Yes, sir, I called quite a few on Sunday.

Q. Who was the first person you called that you recall?

Mr. Pettus:
We object to conversations when the Defendants were not present.

The Court:
We can't go into conversations.

Mr. Simpson:
I haven't started into the conversation.

The Court:
I overrule the objection.

Mr. Simpson:
I asked him who he called.

A. I called Mr. Vann, Mr. Logan, and Mr. Thornton, W. M. Thornton, and Mr. Jack Gunnels, Mr. Ed Weldon, and Mr. Howard Southerland is all I recall offhand.

Q. Now had you discussed this rumor or this news that you had heard with anyone prior to the time you called those men?

A. No, sir.

Q. By telephone or otherwise?

A. No, sir.

Q. When you were there—you said you went to Mr. Parker's?

A. Yes, sir.

Q. When you went, who was with you?

A. Mr. Vann was, D. C. Vann was with me the first time I went over.

Q. Is he a fireman?

A. Yes, sir.

Q. Do you live in the general neighborhood of Mr. Parker?

A. Just across the street from Mr. Parker's house.

Q. What time of day was it on Sunday when you arrived at his place?

A. I went over first at 4:00 p.m., about, around 4:00 p. m., and Mr. Parker told me that I was mistaken in the time, that the meeting was not until 4:30

Q. Did you remain there?

A. No, sir, I went back to the house.

Q. Well, what did you do then?

A. Well, I stayed around the house until about 4:30 and went back over there.

Q. Did you see anybody over there when you got there?

A. Yes, sir, there was some several around. Mr. Vann and I the second time walked up about the same time, and Mr. Logan.

Q. Where was the meeting held?

A. I was under the impression that it was to—

Q. Excuse me, I think you misunderstood me. I said where was it held.

A. Where?

Q. Yes.

A. In the basement of Mr. Parker's house.

Q. Will you tell us who all you recall was present at the meeting besides yourself and Mr. Vann?

A. Mr. Logan, Mr. Reese Thomas, J. B. Otts, J. Mr. Brown, M. L. Hall, and Mr. Howard Southerland, Mr. Sutterlin, and Mr. Shorty Parker. And there was several others that at this time I don't recall their names.

Q. Did any of those gentlemen that you have named, or anyone else in the meeting, tell you what the meeting was about?

A. Prior to going to the meeting?

Q. No, inside of the meeting.

A. Well, they—not directly to me, it was brought up, discussion of the abolishment of the hostler helpers jobs out at the Boyles Terminal.

Q. What is the first thing that you recall that was said by any individual in the meeting?

A. I believe that someone said "Well, fellow, we have gathered here to discuss these,—the abolishment of the hostler helpers jobs."

And I spoke up at that time myself and told them that I had just talked to the General Chairman in Louisville, and he asked me to come to the meeting and tell these men that I was speaking for him, and whatever they did, not to call a wildcat strike, that the Brotherhood couldn't give them any protection whatsoever when they were on a wildcat strike.

Q. What, if anything, did anyone there in the meeting say in response to that statement?

A. Mr. Reese Thomas made the statement that J. B. knew what he was doing, if he hadn't he wouldn't have told them that.

Q. Did you know who he was talking about when hw said "J. B."?

A. Mr. J. B. Otts.

Q. What was Mr. J. B. Otts connection with the firemen at that time?

A He was the Local Chairman, representing the main line, S&NA Division.

Q. That is in Birmingham?

A. Yes, sir.

Q. Did any other person in the meeting have anything to say about this question?

A. Mr. Brown, J. M. Brown, if I recall correctly, about that point asked Mr. Otts if he had discussed it with the management of the L&N Railroad, and Mr. Otts told him he had discussed it with the master

mechanic on Thursday, I believe he said. And Mr. Brown asked him if he had discussed it with Mr. Kirchner, the Superintendent, and he said no, and he didn't intend to discuss it with anyone else.

Q. Did anyone have any suggestion about what they thought ought to be done about the taking off of these hostler helpers jobs?

A. I don't recall any specific one. Some of them said—Reese Thomas said if a man wasn't willing to walk out on a wildcat strike for his fellowman's job, he had a yellow streak up his back.

And I believe Mr. McCutcheon said along about that point that he would just rather there wouldn't anyone get in trouble over his job, that he could draw his Unemployment and live until the thing got to the Labor Board and a ruling handed down by them.

Q. Did you hear the word "strike" used in the meeting at any time except the statement that you just quoted from Mr. Reese Thomas?

A. Well, I mentioned the General Chairman said not to walk out on a wildcat strike.

Q. Now you left the meeting before it was over, did you?

A. Yes, sir.

Q. Was there anything said just prior to the time you left the meeting to you?

A. To me?

Q. Yes, sir.

A. The statement was made to me that if I was not willing to back up a wildcat strike, that I was not wanted at the meeting.

Q. Did you then remain at the meeting a while?

A. A very few minutes.

Q. Did you leave alone or did somebody go with you?

A. Two men went with me.

Q. Who were those men?

A. Mr. Logan and Mr. Vann.

Q. When you left, were you the first three to leave?

A. Yes, sir.

Q. Now, when you spoke of Mr. Paschal, the General Chairman, is that your superior officer in the Union?

A. Yes, sir, it is.

Q. Is Birmingham under the jurisdiction, the Union jurisdiction of Mr. Paschal?

A. The entire L&N System is.

Q. So that in discussing anything with him you are talking to the man you take orders from so far as Union affairs are concerned?

A. Yes, sir.

Mr. Gibson:

Take the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Kennedy, are you a Defendant in this case?

A. No, sir.

Q. Originally were you one of the Defendants?

A. Yes, sir.

Q. Now when you were a Defendant in the case, on November 21, 1955, was your deposition taken by the Railroad Company here in this building?

A. Yes, sir.

Q. And were you under oath at the time that your deposition was taken?

A. Yes, sir.

Q. And you recall the occasion of your deposition being taken, is that correct?

A. Yes, sir, I do.

Q. Have you since reviewed your deposition of November 21, 1955?

A. Yes, sir.

Q. At that time, when your deposition was taken, at that time I was your counsel?

A. Yes, sir.

Q. Later you requested that I withdraw as your counsel?

A. Yes, sir.

Q. And I did withdraw?

A. Yes, sir.

Q. And who was the new counsel that you employed?

A. Mr. Fulford.

Q. Mr. Fulford?

A. Yes, sir.

Q. Now, back in November, of 1955, you testified in this deposition that you had heard a rumor that there was to be a walkout strike in Birmingham, didn't you?

A. I heard a rumor that there was going—that Birmingham was shut down.

Q. That it was actually in effect?

A. That was on Saturday before the strike actually happened on Sunday.

Q. And you heard that when you were at Gadsden and at Anniston?

A. Yes, sir.

Q. Do you recall several days before that time having either seen or been told about this notice on the abolition of the hostler helpers jobs?

A. Yes, sir.

Q. Was that abolition of the hostler helpers jobs widely discussed among the employees of the L&N Railroad Company?

A. Well, I don't know whether you would say "Widely discussed." I had heard it.

Q. It was discussed?

A. And it was on the bulletin board.

Q. And there was a great deal of resentment against that order abolishing those hostler helpers jobs, was there not generally among the employees?

A. Well, in some cases, yes.

Q. Well, in many cases there was a great deal of resentment?

A Well, I wouldn't know about that.

Q. Well, didn't you hear resentment expressed against it?

A. In some cases, yes, sir.

Q. When you heard the rumor up there in Gadsden and Anniston that there was a walkout in Birmingham, wasn't part of the rumor that the walkout was on account of the hostler helpers jobs?

A. At that time I didn't hear what it was about.

Q. You didn't hear what it was about?

A. No, sir.

Q. I will ask you if it wasn't your impression that that was what caused it, what the cause of it was?

A. Well, I didn't know. I had heard that they were shut down, and I knew that the bulletin was to abolish those three hostler helpers jobs.

Q. When you heard that there was a walkout up there, did you make any inquiry as to the cause of it?

A. No, sir, not up there.

Q. Did you know of any other dispute between the Company and its employees at that time other than this hostler helpers dispute?

A. No, sir.

Q. Now at this meeting that you testified about attending, the one there at Mr. Parker's house on Sunday afternoon, I will ask you if at page 17 of your deposition—could I have his deposition there—on the November deposition?

The Clerk:
November 21?

Mr. Pettus:
Yes, sir, that's right.

A. Did you say at page 17?

Q. Page 17. Now, I will read this. I am going to read from pages 17 and 18 to save time, and if there is any place that I read it that is incorrectly transcribed, or that you didn't state, just interrupt me and tell me what you did say on that occasion.

I am asking you if these questions were not asked you on that occasion, and if you didn't make these answers under oath, beginning at the middle of the page:

"Q. How long would you say in minutes, if you can put it in minutes, did you stay in the meeting, Mr. Kennedy?

"A. Oh, some 10 or 15 minutes.

"Q. And you understand you are referring to the Parker meeting?

"A. Yes, sir.

"Q. From the time you went in the garage you stayed in there 15 minutes?

"A. Something like that.

"Q. And this matter was being discussed during the whole of that time?

"A. Yes, sir.

"Q. Now you had something to say about it, didn't you?

"A. Yes, sir.

"Q. Would you mind telling us just what you said, please, sir?

"A. I said any grievance should be handled in the right way, carried through proper channels.

"Q. Did you say that this one ought to be handled that way?

"A. Yes, sir.

"Q. How come you to say that?

"A. I didn't have to.

"Q. Well, when was there any discussion about handling it any other way?

"A. No, just everybody expressed their opinion about it.

"Q. Well, how did any body else express their opinion about handling it?

"A. Well, I didn't talk to anybody else except Mr. Logan and Mr. Vann in particular. They were on my Division, and truthfully we didn't know too much about the circumstances.

"Q. Well, did Mr. Logan and Mr. Vann agree with you it ought to be handled through channels?

"A. Yes, sir.

"Q. Did anybody suggest that it was already being handled through channels?

"A. I think Mr. Otts said that he was handling it with the General Chairman.

"Q. Handling it through channels. Wasn't there some of those men that wanted to handle it by talking to the local officials in some other way?"

I misread that.

"Q. Wasn't there some of those men that wanted to handle it by talking to the local officials, or in some other way?

"A. Not while I was there, no, sir."

Now, did you testify to that? I am just asking you, just answer did you testify as I have read that?

A. At the time this deposition was taken?

Q. That's right.

A. Yes, sir.

Q. Then reading on further:

"Q. How come you to leave before the meeting was over?

"A. Well, if it was an open meeting I wasn't particularly interested in an open meeting."

Now, Mr. Kennedy what did you mean by "An open meeting"?

A. I was under the impression that it was a meeting called by the Firmen's Organization, for no one to attend other than members of the Firemen's brotherhood.

Q. And when you got to the meeting you found that there were members of other crafts that were present there, didn't you?

A. Yes, sir, some other men there that I knew wasn't members of the Firemen. Whether they were members of other crafts or not, I didn't know.

Q. All right, Mr. Kennedy. After that testimony, now if you will turn now to page 19, the next page and begin reading in the middle, the question that begins when you expressed the idea about any grievance should be handled in the regular way. Have you got that place there?

A. Yes, sir.
Q. I am reading:

"Q. When you expressed the idea about any grievances should be handled in the regular way or in the usual way, or in substance that, did anybody disagree with you?
"A. Not that I remember."

Did you testify to that on that occasion?
A. At that time, yes, sir.
Q. At that time you did, didn't you?
A. Yes, sir.
Q. Again, reading on:

"Q. Did anybody say anything about your remark?
"A. If they did, I didn't hear it.
"Q. Did anybody say you ought to get out of that meeting?
"A. I don't think so."

Now, is that what you testified on that occasion?
A. At that time, yes, sir.
Q. Now reading on:

"Q. Did anybody invite you to leave?
"A. I went out on my own.
"Q. I don't mean anybody threw you out?
"A. No, sir.
"Q. But did anybody suggest that since you felt that way about it you ought to leave?
"A. Not to my knowledge.
"Q. You heard nothing of that kind?
"A. No, sir."

Now, is that what you testified on that occasion?

A. At that time, yes, sir.
Q. At that time?
A. Yes, sir.
Q. Now, reading at the bottom of page 20 there:

"Q. Did you hear any discussion about that thing was getting out of hand in there?
"A. No, sir, I did not.
"Q. You didn't hear anybody say that?
"A. No, sir.
"Q. Did anybody besides you in that meeting advocate handling it through channels?
"A. I believe Mr. Otts said he was handling it through channels."
Did you testify to that on that occasion?
A. Yes, sir.
Q. Now, reading on page 22, in the middle of page 22,—and all of this testimony is about this Parker meeting, you understand?
A. Yes, sir.
Q. Is that your recollection about it?
A. Yes, sir.

"Q. Is that what brought up your statement, it ought to be handled through regular channels?
"A. We just some of us discussed it, and somebody asked me what I thought about it, how I thought stuff ought to be handled, and I was trying to tell them how to do it.
"Q. What other facts were being talked about?
"A. Wasn't any that I knew of.
"Q. Everybody there knew the way to handle it was through channels, and knew it was handled through channels, is that what Mr. Otts told you?
"A. Some folks were not exactly familiar with channels.

"Q. You didn't tell them that, just how it was to be handled through channels; you told them it ought to be handled through channels?

"A. Yes, sir.

"Q. You mean to tell me there wasn't any discussion out of anybody's mouth that you heard at that meeting that there wasn't any other way to handle this matter other than through channels?

"A. No, that's right."

Did you testify to that, Mr. Kennedy?

A. At that time, yes, sir.

Q. Now, Mr. Kennedy, after that meeting, did you lay off?

A. Yes, sir.

Q. What time did you lay off?

A. I don't know the exact time. I would say, oh, in the neighborhood of 5:00 or 6:00 o'clock, or maybe a little later. I don't recall the time.

Q. Now, in this November deposition what was the reason you said you laid off?

A. In this one?

Q. Yes

A. At that time I said I had some concrete to pour.

Q. Well, was that true?

A. Not altogether.

Q. What is the reason then that you laid off?

A. I laid off because I didn't want to get called to work in case the strike did happen.

Q. Turn to page 30, at the bottom, the last question there, Mr. Kennedy:

"Q. Mr. Kennedy, you didn't have a suspicion when you called in at 6:00 o'clock and talked to Mr. Jordan that there was going to be a strike that night, did you?

"A. No, sir.
"Q. Huh?
"A. No, sir.
"Q. You hadn't heard enough when you left that meeting over there that you knew those fellows were planning to call a walkout, did you?
"A. No, sir, I didn't."

Did you testify to that?

A. At that time, yes, sir.
Q. You testified under oath?
A. Yes, sir.
Q. What are the hostler helpers jobs, Mr. Kennedy? Before this abolition what did the hostler helper do at Boyles?
A. A hostler moves engines on the track within the roundhouse, and outside on the main line. The hostler helpers job is to throw the switches and help the hostler with that engine, and lookout for the left side of it.
Q. And lookout for the left side?
A. Yes, sir.
Q. That is the hostler helpers job?
A. Yes, sir.
Q. Now, the hostler, does he perform duties similar to what generally the engineer performs on a main line?
A. He handles the engine, yes, sir.
Q. And they call him a hostler because he just handles the engines on short runs, and locally in the Yards, is that right?
A. He handles the engine with no cars attached to it.
Q. With no cars attached to it?

A. Yes, sir.

Q. The engineer then handles the engine when there are cars attached to it, is that right?

A. Yes, sir, that's right.

Q. And the hostler is a man that helps the hostler?

A. That's right.

Q. And in general the hostler's job corresponds in handling the engine to an engineer's job. And does a hostler helpers job correspond to a fireman's job?

A. Yes, sir, you could term it in that term.

Q. In general they have some of the main similar duties, is that correct?

A. Yes, sir.

Q. Now, when a hostler helper—these jobs here were the outside hostler helpers positions that were abolished under this notice, were they not?

A. I believe that is correct, yes, sir.

Q. When an engine was to be taken say out of the roundhouse on the run into say the Passenger Station at Birmingham, or some other local spot, will you just state what the hostler helper did to help the hostler?

A. Well, he would carry the engine from the roundhouse to the passenger shed, or I mean throw the switches.

Q. I mean when he first got aboard, what were the duties of the hostler helper when he first got aboard the engine, when he first reported for duty?

A. Well, you are asking me something, Mr. Pettus, that I have never worked as a hostler.

Q. You never have worked as a hostler?

A. Therefore I couldn't answer all of your questions, due to the fact that I have not worked as a hostler.

Q. You have worked as an engineer?
A. Yes, sir.
Q. You never have worked as a hostler?
A. No, sir.
Q. And you testify that you don't know actually what the hostler helpers duties are?
A. Not altogether, no, sir, I do not.
Q. Do you know what some of them are?
A. Well, more or less, what I have heard.
Q. What you have heard?
A. Yes, sir.
Q. You never have been present when a hostler helper reports for duty and does the work?
A. No, sir, I haven't.
Q. Was there much in the papers and on the radio when this walkout occurred here in Birmingham?
A. Well, there was, it was in the newspapers, yes, sir.
Q. You say it was in the newspapers?
A. Yes, sir.
Q. And from the time that you reported out Sunday night, when did you go back to work?
A. I don't recall whether it was on Thursday or Friday of the following week.
Q. You don't know whether you went back to work Thursday or Friday?
A. No, sir, I don't. It could have been later than that.
Q. Where were you during the time that the walkout was on, Mr. Kennedy?
A. I beg your pardon?
Q. Where were you?
A. During the entire walkout or wildcat?
Q. Yes.
A. Well, I was around home.

Q. You stayed home all the time?

A. Yes. I come to town a time or two.

Q. Mr. Kennedy, what was the statement that you said that Mr. Reese Thomas made at that meeting?

A. Which one?

Q. Give me every statement he made then.

A. One statement that he made, he said "J. B. knew what he was doing or he wouldn't have told us to do that."

Q. Well, now, you have never made that statement in any previous deposition that you have given in this case, have you?

A. I don't recall.

Q. In that language, you have never said that before? You have testified twice in this case and you have never made that statement, have you?

A. I don't recall whether I have or not.

Q. I mean in that language. And what was the other statement that you said Mr. Thomas made?

A. He said that any man that wasn't willing to fight for his fellowman's job had a yellow streak up his back.

Q. And in your deposition of November, 1955, which was about one month after October 23, you testified that no statement like that had ever been made at that meeting, didn't you at that time in that deposition you testified that no other statement like that was made?

Mr. Gibson:

We object to that as a conclusion of the witness.

The Court:

I sustain the objection as repetition. He has read the deposition.

Mr. Simpson:
He has read exactly what he said.

Q. Well, you didn't testify that that statement was made in that deposition, did you?
A. No, sir.
Q. And Mr. Kennedy your testimony here has been changed from the testimony you gave on the deposition in November, 1955, hasn't it?

Mr. Simpson:
We object to that.

The Court:
I sustain the objection. That is for the jury to judge, whether or not he has changed it.

Q. I will ask you if at the time that you gave your deposition on November 21, 1955 if you didn't testify in your deposition of May 11, 1956 that an incident had occurred during the time that your November deposition was being given that persuaded you or compelled you to testify the way you did in November?
A. I didn't—Mr. Pettus, I did't get quite all your question. Will you repeat it, please, sir?
Q. Maybe I can shorten it. I want you to just understand it. In your May, 1956 deposition didn't you testify that an incident had occurred while you were giving your November, 1955 deposition or shortly before that?
A. Yes, sir.
Q. You testified to that?
A. Yes, sir.
Q. Tell us what that incident was.

A. A few days before I went on the witness stand in November for the deposition I was going to work, and it was in the afternoon, late in the afternoon. And I parked my car right across the street from Rex's Barbecue, which is—the highway runs between the washroom and Rex's Barbecue. And as I got out of my car, locking it, there was an automobile drove up, coming from the opposite direction I was in and stopped right at the back of my automobile, and the man rolled the window down in the back seat and stuck an object out of it that appeared to me to be a shotgun and told me if I said anything on deposition that got anybody in trouble I was a dead son-of-a-bitch.

Q. When that incident occurred, did you report it?

A. No, sir.

Q. Did you work that night?

A. Yes, sir.

Q. Did you report it to any officials of the Railroad or any fellow employee that night?

A. No, sir, I did not.

Q. Did you call the Birmingham Police or the Sheriff's Office or the United States Marshal and report it that night?

A. No, sir, I didn't.

Q. Did you report it to me?

A. No, sir.

Q. I was your attorney at that time?

A. Yes, sir.

Q. You never mentioned that incident to me, did you?

A. No, sir, I didn't.

Q. Did you mention that incident to anyone for several months?

A. Not for quite some little bit.

Q. It was many months later before you mentioned that incident to anybody, wasn't it?

A. Well, I don't know whether you would say many months. It was a right smart little while. I don't recall exactly how long.

Q. It was well into the spring of 1956, wasn't it, shortly before you gave this deposition in May?

A. I believe—I am not sure just how long it was, Mr. Pettus. It was a right smart little while.

Q. A little while, and you just kept that to yourself and didn't tell anybody about it?

A. Yes, sir.

Q. Now, after your deposition was taken in May, of 1956, the Railroad dropped you as a Defendant, didn't they, in the case?

A. After the May deposition?

Q. After your second testimony in the case?

A. Yes, sir.

Q. Now did you have any agreement with the Railroad or did your attorney have any agreement with the Railroad that you know of that you would be dropped as a Defendant at any time?

A. No, sir, not to my knowledge.

Q. And it was news to you that the Railroad dropped you as a Defendant?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Mr. Pettus:

That's all.

Re-Direct Examination.

By Mr. Gibson:

Q. Mr. Kennedy, on that occasion you told these gentlemen about when the automobile drove up and the statement was made by someone in it that you have quoted, what sort of automobile was it?

A. It was a black Oldsmobile.

Q. Did you get the license number?

A. It didn't have a license plate on the rear.

Q. Was there one man in it or more than one?

A. Five men in it.

Q. You are a married man, aren't you, Mr. Kennedy?

A. Yes, sir.

Q. Have a family?

A. Yes, sir, I do.

Q. In the Union Organization or setup which they had in October, of 1955, which Union was directly concerned by whatever happened to the hostler helpers jobs?

A. The Brotherhood of Locomotive Firemen and Enginemen.

Q. So far as you know was there any other Union which had jurisdiction over that particular thing?

A. No, sir.

Q You told Mr. Pettus on cross examination that you laid off because you didn't want to be called to work. Why didn't you want to be called to work?

Mr. Pettus:

Now, we object to that. It calls for a mental operation of the witness.

The Court:
I sustain the objection.

Q. In connection with your expressed desire not to be called to work if the strike took place, did you have any fear of personal injury or violence?

Mr. Pettus:
We object to that. It calls for a mental operation, incompetent, irrelevant, and immaterial.

The Court:
I sustain the objection for the time being.

Mr. Simpson:
We except.

Q. If I understood your testimony correctly, the incident with the object which looked like a shotgun, and the threat that if you told anything on your deposition that hurt anybody you would be a dead son-of-a-bitch, that took place before you gave your first deposition that Mr. Pettus has been asking you about?

A. Yes, sir, it did.

Q. About how many days before, if you remember?

A. Oh, some two or three, maybe four days before. I don't remember exactly.

Q. Had you already received a subpoena to come to Court and give your testimony by deposition at that time?

A. Yes, sir, I had.

Q. You had received a subpoena from the Clerk of the United States Court to come in and give your deposition?

A. I believe I had got the—you mean the one that—
Q. The notice.
A. The notice?
Q. Of the first taking of the deposition?
A. I am not positive whether I had got that one or not.
Q. You knew you were coming in to testify as a witness on your deposition in the United States Court at the time this Oldsmobile—
A. Yes, sir.
Q. —incident took place?
A. Yes, sir.

Mr. Gibson:
That's all.

Re-Cross Examination.

By Mr. Pettus:
Q. I don't believe I asked you, you didn't know any of the men in the automobile?
A. No, sir, I did not.

Mr. Pettus:
All right, that's all.

Re-Direct Examination.

By Mr. Gibson:
Q. Was there anything to prevent you from seeing the faces of these men in the automobile?
A. Yes, sir, the one that was talking to me appeared to have a handkerchief or something to that effect over his face.
Q. Did you recognize his voice?

A. No, I didn't.
Q. Had you ever heard it?
A. No, I hadn't.

Mr. Gibson:
That's all.

(Witness excused.)

Mr. Simpson:
Call Mr. Vann, please.

D. C. VANN, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Mr. Vann, will you state your initials to the jury, please, sir, your name?
A. D. C. Vann.
Q. Where do you live?
A. 1816 McCaskill Street, Tarrant.
Q. Jefferson County?
A. Jefferson County.
Q. How long have you lived here?
A. All my life.
Q. Who do you work for?
A. L&N Railroad.
Q. How long have you worked for the L&N Railroad?
A. 10 years.
Q. What do you do for it?
A. Fireman.

Q. Do you belong to a Union?

A Yes, sir.

Q. What Union do you belong to?

A. BofLF&E.

Q. Brotherhood of Locomotive, Firemen and Enginemen?

A. Yes, sir.

Q. That is the same Union that the hostlers and hostler helpers belong to, is it not?

A. Yes, sir.

Q. Now, do you recall last fall being present at a meeting at Mr. Parker's home?

A. Yes, sir.

Q. H. K. Parker?

A. Yes, sir.

Q. Now, I am not going into all the preliminaries about where you had been, and how you happened to get there. Do you recall who suggested that you go to that meeting?

A. Yes, sir.

Q. Who?

A. Mr. Kennedy.

Q. Who?

A. Mr. Kennedy.

Q. Mr. Kennedy?

A. Yes, sir.

Q. The gentleman who just left the stand here?

A. Yes, sir.

Q. Called you and asked you to come to the meeting?

A. Yes, sir.

Q. All right, sir. When you got to the meeting at Mr. Parker's house, did you know Mr. Parker?

A. Yes, sir.

Q. Can you tell us the people that you recall now who were there that afternoon? This is what date? Give us the date if you can.

A. Sunday afternoon.

Q. What date?

A. I don't remember the date.

Q. It was on Sunday afternoon?

A. Yes, sir.

Q. About what time of day?

A. Well, I don't remember that because I was early and I left and came back.

Q. All right.

A. About 2:30 I would guess, or 3:00 o'clock.

Q. In the afternoon?

A. Yes, sir.

Q. Had you worked that day?

A. No, sir.

Q. And was that the day on which the strike began?

A. Yes, sir.

Q. In other words, it was the afternoon before the strike began that night?

A. Yes, sir.

Q. That sufficiently identifies it.

Mr. Pettus:

We object to that term, "the strike." Work stoppage is what occurred.

The Court:

I sustain the objection.

Mr. Simpson:

The Union members refer to it as a "wildcat strike."

The Court:
It has been referred to that way, I guess.

Mr. Simpson:
That is their terminology for it, not mine.

Q. Now, Mr. Vann, tell us the people you saw there that afternoon that you recall and knew at that time?
A. Mr. Kennedy, Logan, myself, Parker, Mr. Otts, Mr. Letchman.

The Court:
Mr. Letchman?

The Witness:
Letchman, Mr. Thomas.

Q. Reese Thomas?
A. Yes, sir, Mr. Baum.
Q. How do you spell that Baum?
A. B-a-u-m-, I presume.
Q. Speak up clearly so everyone can understand you. Mr. Baum.
A. All right. Mr. Brown.
Q. Which Mr. Brown?
A. J. M. Brown, Jr.
Q. All right.
A. A man I knew as Mack, a man I knew as Red, but I don't know their names.

The Court:
Do you see either one of those men in the Courtroom?

The Witness:
I beg your pardon?

The Court:
Do you see either Red or Mack in the Courtroom?

The Witness:
Yes, sir, I see Mack.

Q. Is that Mr. McCutcheon?
A. Yes, sir. I—and I saw Mr. Anderson, Mr. Sutterlin and Mr. Southerland, a Mr. Southerland.
Q. Mr. Sutterlin and Mr. Southerland?
A. I believe that's right, yes, sir.
Q. All right.
A. That's about all I can remember right offhand.
Q. Are those gentlemen that you called off certain names of here, are they the gentlemen sitting around here, the Defendants in this Courtroom now?
A. Yes, sir.
Q. All right. Who had charge of the meetings, or took charge of the meeting?
A. There wasn't a regular meeting. Mister—we just all gathered there.
Q. Yes.
A. I guess.
Q. It wasn't a Firemen's official meeting?
A. No, sir, it wasn't.
Q. Did you hear anybody say anything towards the opening of the meeting about what the purpose of the meeting was?
A. Well, someone said let's get down to business, and Mr. Otts said, they got to talking, and he said he couldn't tell anyone to strike, he said it wasn't up to him, he said he couldn't tell them what to do, it would be up to them.

Q. Up to whom?

A. The men.

Q. The men that were there?

A. Yes, sir.

Q. All right. Did you hear anybody else make a statement to the meeting?

A. Well, I heard Mack, Mr. McCutcheon, say that he didn't want to see anyone have any trouble over his job, he wanted it handled the right way. And Mr. Brown said that he would like to see it handled, I believe he said he would like to see it handled with the local officials if I can remember correctly.

Q. Did you hear anybody else make a statement to the meeting?

A. Well, that's about all. A lot of them were talking at the same time.

Q. Well, I don't mean to be refreshing your recollection, but who had you gone to that meeting with?

A. Mr. Kennedy.

Q. Well, did he make a statement to the meeting?

A. Yes, sir, he did.

Q. Tell the jury what he said.

A. He told them that he had had instructions from Mr. Paschal, Jake Paschal that he couldn't, they couldn't have a legal strike, that he couldn't tell them to strike. By that I mean that the Union couldn't support them if there was a strike.

Q. That the Union couldn't support them?

A. Yes, sir.

Q. If there was a strike?

A. Yes, sir.

Q. What sort of strike did they call it that they were planning or talking about?

A. Well, it was just—a strike, wildcat strike I guess.

Q. All right.

Mr. Pettus:

We move to exclude that as what he guesses, unless he heard that.

Q. Was that language used there at the meeting?

A. I don't remember.

Q. As between a legal strike and a wildcat strike?

A. I don't remember whether that was definitely used or not.

The Court:

I will exclude his answer. Anything depending on a guess, gentlemen, that is excluded from your consideration.

Q. In your best judgment from your knowledge of Union affairs would that have been a wildcat strike?

A. Yes, sir, it would have.

Q. All right. Now then what was the final result of the discussion? What decision did they reach?

A. Well, we left after that, three of us did.

Q. Who were the three?

A. Kennedy, Logan and myself.

Q. Mr. Kennedy, the man that just left the stand?

A. Yes, sir.

Q. Mr. Logan and you?

A. Yes, sir.

Q. You all left?

A. Yes, sir.

Q. Before you left did you hear any statement, was there anything said about volunteers for picketing?

A. Yes, sir.

Q. Now just tell the jury what was said about that before you left.

A. Well, they were trying to find out who would do picket duty, and who would not. And when they

found out, they said all others that wouldn't, they wasn't wanted or wasn't needed.

Q. Now, had you volunteered to do picket duty?

A. No, sir.

Q Had Mr. Logan volunteered to do picket duty?

A. No, sir.

Q. Had Mr. Kennedy volunteered to do picket duty?

A. No, sir.

Q. Now then you say you three left?

A. Yes, sir.

Q. That was after the statement you say that those who would not do picket duty were not wanted at the meeting?

A. I don't remember whether it was exactly those words, but it was right in there.

Q. Is that the substance?

A. Yes, sir.

Q. Of what was said?

A. Yes, sir.

Q. All right, when you left the meeting, or before you left, was there anything said there at the meeting about whether or not they could have regular picket lines, with signs being carried?

A. I don't remember it if there was.

Q. You don't remember anything about that?

A. No, sir.

Q. Now, what did you do when you left the meeting?

A. I went home and reported off.

Q. When were you due to go out again on your run?

A. The next morning, or the next night, Monday night.

Q. Monday night?

A. Yes, sir.

Q. At what time?
A. 7:30, on duty I believe it is; 8:00 o'clock.
Q. 8:00 o'clock?
A. Yes, sir.
Q. So when you left that meeting, after what you had heard there, you did what now?
A. Reported off.
Q. Tell the jury what you mean by reported off.
A. All right.
Q. Some of them may not understand railroad terminology.
A. It is an off board where you report off if you are sick, off on business, or something like that.
Q. You call in?

A Juror:
In other words, you laid off?

The Witness:
Yes, sir, I laid off.

Q. You called in to the headquarters?
A. Yes, sir.
Q. To the engine dispatcher's office out there, did you?
A. Yes, sir.
Q. Who was that on duty that afternoon?
A. I believe that was Mr. Jordan.
Q. What did you tell him you wanted to lay off for?
A. I said I was sick.
Q. You told him you were sick?
A. Yes, sir.
Q. Were you sick or not?
A. Not physically, no, sir.

Q. Not physically?
A. No, sir.
Q. Well, were you sick some other way?
A. A little bit.
Q. In what way? Did you not want to go to work?
A. I just didn't want to have any part in it.
Q. I see. And that was after you left the meeting?
A. Yes, sir.
Q. And you knew what had been done there?
A. Yes, sir.
Q. Now did anybody during the course of that time ask you to do any picketing duty personally?
A. During the meeting?
Q. No, I don't mean that. I mean during the course of the strike.
A. Yes, sir.
Q. Who did it?
A. Mr. Breedlove.
Q. Where were you when he asked you that?
A. I was at home.
Q. How did he ask you?
A. Over the phone.
Q. Did you recognize his voice as being Mr. Breedlove or did he tell you it was him?
A. Well he told me it was him, and that's the only thing I knowed.

Mr. Pettus:
We move to exclude that.

Q. Do you know Mr. Breedlove?

Mr. Pettus:
If he didn't recognize the voice, not identified as his voice.

Q. Do you know Mr. Breedlove?
A. When I see him, yes, sir.
Q. Now the man that called you, tell the jury whether or not—

Mr. Pettus:
We would like a ruling on that.

The Court:
Well, did you recognize his voice?

The Witness:
A man called me and said it was Mr. Breedlove, and that's all I know.

The Court:
I sustain the objection.

Q. Anyway, you didn't do any picket duty?
A. No, sir.
Q. You did not?
A. No, sir.

Mr. Simpson:
All right, you can have the witness.

Cross Examination.

By Mr. Pettus:
Q. Now, Mr. Vann, you didn't do any work during the walkout, did you?
A. No, sir.
Q. Did you go near any part of the railroad property during the strike?
A. No, sir.

Q. You didn't go down there?
A. No, sir.
Q. You just stayed away from it?
A. Yes, sir.
Q. Had you heard about the abolition of the hostler helpers jobs prior to this meeting?
A. When Mr. Kennedy called me.
Q. Is that the first you had heard of it?
A. Yes, sir.
Q. You went to the meeting right after you heard about it, is that right?
A. Yes, sir.
Q. Do you know Mr. Red Pennington?
A. No, sir.

Mr. Pettus:
Will you stand up Mr. Pennington?

Q. Was this gentleman here at the meeting?
A. I didn't see him if he was.
Q. You didn't see him at the meeting?
A. No, sir.

Mr. Pettus:
You can sit down.

Q. The man that you mentioned by the name of Red is some other Red, isn't it?
A. Yes, sir.
Q. You don't mean Mr. Pennington is the man that you saw?
A. No, sir.
Q. And you didn't see Mr. Pennington at the meeting?
A. No, sir.

Q. Now when you called in and laid off after this meeting, did you come to that decision yourself?

A. Yes, sir.

Q. Will you describe the place where this meeting occurred?

A. It was in a basement.

Q. A basement?

A. Yes, sir.

Q. And how many men were there?

A. I couldn't tell you.

Q. You don't know how many men were there?

A. No, sir.

Q. Was it dark in there?

A. No, sir, it wasn't dark.

Q. It was light, was it?

A. Yes, sir.

Q. There wasn't any reason you couldn't see them, was there?

A. No, sir.

Q. In the meeting?

A. No, sir.

Q. Were they standing around in little groups, one place and another?

A. Yes, sir.

Q. There was just sort of a general hubbub and general commotion in the meeting, is that right?

A. Yes, sir.

Q. And after the meeting was over you just called in yourself and laid off?

A. I didn't stay until the meeting was over.

Q. You didn't stay until the meeting was over?

A. No, sir.

Q. The meeting was still in progress when you left?

A. Yes, sir.

Q. How many men left at the same time you did?

A. The two men that I know of that I mentioned. I don't know—

Q. Kennedy?

A. Yes, sir.

Q. And Logan?

A. Yes, sir.

Q. And yourself?

A. Yes, sir.

Q. You didn't see anybody else leave?

A. No, sir.

Q. How long had you been at the meeting when you left?

A. I would imagine 20 or 30 minutes.

Q. You imagine that you had been there 20 or 30 minutes?

A. I imagine.

Q. When you left?

A. I didn't keep time.

Q. Could you be mistaken about that?

A. Yes, sir.

Q. You could have just been there about 10 minutes?

A. I could have, yes, sir.

Q. But whenever you left, you left at the same time Kennedy left?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And when did you go back to work?

A. I don't remember, sir, whether it was the Thursday night following that or not, I would have to check.

Q. But you did go back to work?

A. Yes, sir.

Q. Did you read in the newspapers that the strike was over, or the walkout was over?

A. Yes, sir.

Q. The newspapers called it a strike, didn't they?

A. I don't remember now exactly what they called it.

Q. In other words, when you read that it was over you went on back to work?

A. Yes, sir.

Q. From the time you laid off until you went back to work did you make any calls down to the plant there?

A. No, sir.

Q. Or down to the Yard?

A. No, sir.

Q. To report back to work?

A. No, sir.

Q. Did you have to call in to be reassigned to your job, or were they supposed to call you?

A. I had to call in and report back for work.

Q. You had to call in and report back for work?

A. Yes, sir.

Q. Do you recall the day you did that?

A. No, sir, I don't.

Q. Had you made any attempt to call from Sunday on through Thursday?

A. No, sir.

Q. You waited, did you, until you heard that it was over before you called back, is that right?

A. Yes, sir.

Q. You got the word through the newspapers, is that right?

A. It may have been through the newspapers, or I might have been told.

Q. You may have been told?

A. Yes, sir.

Q. You don't remember now how you knew it?

A. No, sir.

Q. But when you did report back you were able to get somebody on the line and they were operating, is that right?

A. Yes, sir.

Mr. Pettus:
That's all.

The Court:
Are you through with this witness?

Mr. Simpson:
May I have half a minute, Your Honor?

The Court:
Yes.

Re-Direct Examination.

By Mr. Simpson:

Q. Mr. Vann, do you know how many other people were at that meeting that called up the call boy out there and laid off?

A. No, sir.

Q. With Mr. Jordan as sick right after that meeting?

Mr. Pettus:
We object to that.

Q. Do you know of your own knowledge is all I am asking you?

A. I don't know who laid off sick, no, sir, I couldn't tell you whether they laid off sick or not.

Q. You didn't fail to work and lay off because you were mad at the Railroad or wanted to strike in any way, did you?

A. No, sir.

Q. It was some other reason besides that that made you lay off?

A. Yes, sir.

Q. All right. That's all—you were not sick?

A. No, sir.

Mr. Pettus:

Well, you laid off because you didn't want to work, didn't you?

The Witness:

Yes, sir.

Mr. Simpson:

Why didn't you want to work?

Mr. Pettus:

We object to that.

Mr. Simpson:

Ho, ho. You had been around there several years, hadn't you?

The Witness:

Yes, sir.

Mr. Simpson:

10 years I believe you told us?

The Witness:
Yes, sir.

Mr. Simpson:
All right, you can come down.

The Court:
We will take a recess for about 15 minutes at this time.

(Witness excused.)

(A short recess was had.)

The Court:
Call your next witness.

Mr. Simpson:
Call Mr. Smith.

A. J. SMITH, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you tell the jury your name, please, sir?
A. A. J. Smith.
Q. Where do you live, Mr. Smith?
A. Hartselle.
Q. Where do you work?
A. Decatur Freight Office.
Q. Of what Company?
A. L&N.

Q. How long have you been working for the L&N?

A. I have 42 years of service.

Q. What is your job up there?

A. Cashier.

Q. How long have you been cashier up at the Decatur Freight Office?

A. A couple of years.

Q. What are your duties as cashier?

A. To enter all cash items and collect freight, collect the money and deposit it.

Q. Where is your office, your desk, where is your place of business there?

A. The front of the building, the first desk.

Q. Front office, downtown there in Decatur?

A. Yes, sir.

Q. Now, Mr. Smith, do you recall some strikes last year here on the L&N Railroad?

A. Yes, sir.

Mr. Pettus:

We object to the "strikes", may it please the Court. That has to be limited to this October occasion.

Mr. Simpson:

I am going to get around to this particular one.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. What time do you recall the strikes were?

Mr. Pettus:
We renew our objection to any strike, plural, strikes.

Mr. Simpson:
I am trying to keep from leading the witness.

The Court:
We are concerned about only one occasion.

Mr. Simpson:
That's right, yes, sir.

The Court:
Ask him if he recalls one in October, I believe it was.

Q. Do you remember a strike in October, of last year?
A. Yes, sir.
Q. Do you remember the day it began?
A. Well, the particular day I know was the 24th of October.
Q. That is the day you knew about it?
A. Yes, sir.
Q. You don't know when it began?
A. No, sir.
Q. What day of the week was the 24th of October?
A. Monday.
Q. On Monday?
A. Yes, sir.
Q. You don't know whether it began down here at 9:00 o'clock Sunday night before that or not, do you?
A. No, sir.

Q. All right. Now are you a member of any of the Railroad Brotherhoods?

A. Not now, no.

Q. Not now?

A. No, sir.

Q. Were you on duty on Monday the 24th of October?

A. Yes, sir.

Q. Did anything unusual occur? I don't want to lead you and tell you what I am trying to get, but did anything unusual occur on that Monday?

A. Yes, sir, there was three or four men came in to the office. I was there. It was about 4:20 in the afternoon.

Q. Had you heard prior to that time that they were coming up there from Birmingham?

A. I had not, no, sir.

Q. You had not heard that?

A. No, sir.

Q. All right. They came in the freight office?

A. Yes, sir.

Q. Three or four of them?

A. Something like that.

Q. Now, how far is your desk from the door where they walked in the front, into that freight office there?

A. I judge 6 or 7 feet.

Q. All right. Where did they come when they came in there?

A. I believe they came in from the side door, through the freight house.

Q. Through the freight house?

A. Yes, sir.

Q. Would that put them behind the counter or the desk where you were or in front of you?

A. It put them in front of me.
Q. What did they say and do when they came in?
A. They wanted to know who was in charge.

Mr. Simpson:
Would Mr. Pennington, Mr. Red Pennington mind standing up, please?

Q. Do you recognize Mr. Red Pennington there?
A. I believe so.
Q. Was he one of those gentlemen?
A. I believe so, yes, sir.
Q. Now when they came in what was said and done?
A. They asked me who was in charge, and I told them J. J. Hardwick, but he wasn't in. I told them the chief clerk was in, he was back in the office, to my back.
Q. All right, that was Mister who?
A. Sir?
Q. Who was the chief clerk?
A. Mr. Petty.
Q. Mr. Petty?
A. R. H. Petty.
Q. All right, what did they do then when you told them that?
A. They said they were on strike and wanted us to come out with them.
Q. Had anybody mentioned strike up to that time to you?
A. Not to me, no, sir.
Q. Were you mad at the Railroad or wanting to quit in any way?
A. No, sir.

Q. What were you doing at the time they walked in?

A. I was making my deposit, or writing up my deposit.

Q. That consisted of checks and money?

A. Checks and money, yes, sir.

Q. Do you remember the total of how much you had?

A. Yes, sir.

Q. Was it out there on your desk?

A. Yes, sir.

Q. About how much did you have there?

A. $10,530.54.

Q. Have you looked that up for me on your records to see the exact amount?

A. I never will forget it.

Q. All right. Now when they came in and said that to you, what did you say?

A. Sir?

Q. After you told them to see Mr. Petty did they come back to you?

A. I told them I would come out as soon as I got through with my deposits, and putting my money and freight bills in the safe.

Q. All right. What did they say to the other people?

A. They said "Come on out."

Q. Who said that?

A. One of the men that was in front of me.

Q. One of the three men there?

A. Yes, sir.

Q. Do you know the names of the other two that were with Mr. Pennington?

A. No, sir, I don't.

Q. Was Mr. Pennington doing part of the talking?

A. Yes, sir.

Q. What did he say?

A. He told this man, says "Let him stay in here and let him make up his deposits and put his billings up, and then he will come out."

Q. All right. Did you promise them you would?

A. Yes, sir, I told them I would.

Q. Now then you had not intended, I believe you say you had not intended quitting work?

A. No, sir.

Q. Or coming out in any way?

Mr. Pettus:

We object to that, may it please the Court. I hadn't heard him say that.

The Court:

I sustain the objection.

Mr. Pettus:

We move to exclude it.

Q. Why were you coming out?

Mr. Pettus:

We object to that, incompetent, irrelevant and immaterial, a mental operation.

The Court:

As to why, yes, I sustain the objection.

Q. Were you scared?

Mr. Pettus:
We object to that, incompetent, irrelevant and immaterial.

The Court:
I overrule the objection.

Mr. Pettus:
We except.

A. Do you want me to answer?
Q. Yes, sir.
A. Why—ask the question again.
Q. Well, after these men had told you to come on out—well, how many times did they tell you to come out?
A. Three times.
Q. Three times?
A. Yes, sir.
Q. All right now let's come down to the time they told you to come out. What happened on that particular occasion?
A. Well there was, I believe two of the men, or more, I wouldn't swear if there was any more than two or not, told me "Come on out of here."
Q. "Come on out of here"?
A. And I says "I'm coming now as soon as I put this in the safe", and I was fixing to put it in the safe then.
Q. All right. Where was that man when he said that to you?
A. Right in my face.
Q. Right in your face?
A. Yes, sir.
Q. Did you look at him?

A. Yes, sir.
Q. Tell the jury his appearance.
A. He looked dangerous.
Q. What was the color of his face?
A. Red-faced.
Q. Red, flushed?
A. Yes, like he was angry.
Q. Angry?
A. Like he meant business.
Q. Like he meant business?
A. Yes, sir.
Q. All right. Now then when you got your money locked up did you come out?
A. I came right on out the front door.
Q. I will ask you, were you scared at that time?

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Pettus:
We except. Incompetent, irrelevant, and immaterial, mental operation.

Q. The Court says you can answer that.
A. Yes, sir.

Mr. Pettus:
We move to exclude the answer on the same grounds.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did you then get up and get out?
A. Yes, sir.
Q. Now after you got on the outside, did Mr. Pennington say anything to you?
A. He asked me was I coming back tomorrow.
Q. Mr. Pennington asked you if you were coming back to work tomorrow?
A. Yes, sir.
Q. What did you tell him?
A. I told him I didn't know.
Q. What did he say then?
A. He said "Well, if I come back up here and find you here, I'll whip you all over this place."

Mr. Simpson:
All right, you can have the witness.

Cross Examination.

By Mr. Pettus:
Q. Now, Mr. Smith, you say there were three or four men?
A. That is my best memory, yes.
Q. You don't know whether there were three or four?
A. Three or four.
Q. Three or four?
A. Yes, sir.
Q. You are not positive?
A. No, sir.
Q. Whether there were three or four?
A. No, sir.

Q. Now, Mr. Smith, Mr. Simpson had Mr. Pennington stand up. Who were the other two men? Can you point them out here in the Courtroom?

A. No, I couldn't. They had their work clothes on. I couldn't.

Q. Stand up and look around out at them and see if you can tell the other two men?

A. No, sir.

Q. If you see the other two men I want you to name them.

A. I couldn't name them if I knew them, I couldn't identify them.

Q. In your best judgment are the other two men in the Courtroom? Just take your time and look at everybody in here, up here at the counsel table and everywhere else in the room.

A. Well, I wouldn't say. They had their work clothes on.

Q. Would you have recognized Mr. Pennington if he had not been pointed out to you the way he was?

A. Yes, sir.

Q. You knew him?

A. Yes, sir.

Q. Did you know him before?

A. No, sir.

Q. You didn't know him before?

A. I have seen him since.

Q. But you knew him on that occasion?

A. Yes, sir.

Q. None of these men were armed, were they?

A. How is that?

Q. None of these men were armed, were they.

A. I didn't see any.

Q. Not anything; they were just there?

A. Yes, sir.

Q. Was he dressed in work clothes?

A. Yes, sir.

Q. He was dressed in work clothes at that time?

A. I believe so.

Q. He was?

A. I believe they were.

Q. You believe all of them were dressed in work clothes?

A. Yes, sir, I wouldn't say that they had on their best or anything like that.

Q. I mean, you have been with the Railroad 43 years?

A. Yes, sir.

Q. Well, you know when railroad men have on work clothes, transportation men, and when they don't, don't you?

A. That's right.

Q. Well, did these men that you saw there then have on—

A. Had on overalls.

Q. Had on overalls?

A. Work clothes, yes, sir. I consider them work clothes.

Q. And this was on Monday, October 24?

A. Yes, sir.

Q. Are you sure that the conversation you had wasn't with one of the other men?

A. Yes, sir.

Q. One of the other three men?

A. He was talking direct to me.

Q. Talking direct to you?

A. Yes, sir.

Q. But the man that you say was red-faced, the man that you say was red-faced, that was not Mr. Pennington, was he?

A. No, sir.

Q. The man that was talking to you that you said was red in the face?

A. No, sir.

Q. That wasn't Mr. Pennington?

A. No, sir.

Q. That was one of the others?

A. That was one of the others.

Q. You don't know who he was?

A. No, sir.

Q. When you got outside, was that the time, when you got outside there was that when you had some conversation with Mr. Pennington?

A. He was with me.

Q. You say he had a conversation with you?

A. Yes, sir.

Q. Did you go back to work the next day?

A. No, sir.

Q. When did you go back?

A. I went down the next day.

Q. Went down the next day?

A. Yes, sir.

Q. That would have been Tuesday?

A. Yes, sir.

Q. You went back to work on Wednesday?

A. No, sir.

Q. When did you go back?

A. I went back to the freight office, but I went back to work Thursday.

Q. Went back to work Thursday?

A. Yes, sir, when they called us back.

Q. Was there anyone up there working Monday, Tuesday, or Wednesday?

A. We all worked Monday.

Q. You all worked Monday until what time?

A. It was around 4:20 in the afternoon when they came in.

Q. Then did you work on Tuesday?

A. No, sir.

Q. Did anybody?

A. Not as I know of, I wasn't there.

Q. You didn't go down yourself?

A. No, sir.

Q. You didn't work on Wednesday?

A. No, sir.

Q. Did you go down?

A. I went down a little while Wednesday morning.

Q. You went down a little while Wednesday morning?

A. Yes, sir.

Q. Was there any work going on then?

A. No, sir.

Q. Now, before these men came up there did you know that Birmingham had a work stoppage?

A. Someone said they heard over the wires that they did, yes, sir.

Q. Heard over the wires that they did?

A. Yes, sir.

Q. It was in both the Decatur and the Birmingham newspapers then, wasn't it?

A. I don't know.

Q. Didn't one of these men there on that occasion, did Mr. Pennington have a Birmingham newspaper?

A. Did Mr. Pennington have a Birmingham newspaper?

Q. Yes, did he have a Birmingham newspaper.

A. I wouldn't swear to that.

Q. Did you see a newspaper, Birmingham newspaper?

A. No, sir.

Q. At any time that any of the three of them were there?

A. I don't remember one.

Q. Do you know Mr. Toone?

A. Yes, sir.

Q. Who is he?

A. He is Sergeant Toone of the L&N.

Q. Sergeant Toone of the L&N?

A. Yes, sir.

Q. Does he carry a gun?

A. I have seen a gun on him.

Q. You saw him, he was there on this occasion, wasn't he?

A. He was not in the office.

Q. He was not in the office, he was outside there, wasn't he?

A. Yes, sir, he was on the outside.

Q. Didn't he have his pistol on him?

A. I don't know.

Q. Did you see him at all on this occasion?

A. Toone?

Q. Yes.

A. I saw him on the outside after I came out.

Q. You saw him, he was standing out there, wasn't he?

A. Yes, sir.

Q. Did you say anything to him?

A. No, sir.

Q. He didn't say anything to you?

A. No, sir.

Mr. Pettus:

That's all.

Mr. Simpson:

May it please the Court, we put Mr. Smith on out of order because he is the only man, he and one other man, the only men that had the combination to the safe, and that can carry on business there at Decatur. I would like to ask counsel if he will consent for him to be excused and go home.

Mr. Pettus:

If the Decatur office is shut down we will let him go back.

(Witness excused.)

The Court:

Call your next witness.

Mr. Simpson:

Call Mr. Logan.

WILLIAM L. LOGAN, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Will you state your name to the jury, please, sir?

A. William L. Logan.

Q. Where do you live, Mr. Logan?

A. 4913 Avenue N, Central Park.

Q. How long have you lived in Birmingham?

A. Well, for the past—ever since I got out of the Service in '45.

Q. Who do you work for?
A. L&N Railroad.
Q. How long have you worked for the L&N Railroad?
A. It will be 10 years the 30th day of January, this coming January.
Q. You were working for them then before you went in Service?
A. No, sir.
Q. Oh no, '45; that's right?
A. Yes, sir.
Q. You went to work for the L&N when you got back from the Service?
A. Well, in '47.
Q. In '47?
A. That's right.
Q. All right now, Mr. Logan, what is your job for the L&N?
A. Fireman
Q. What do you do?
A. Fireman.
Q. What job, what Division, Seniority District are you in?
A. Alabama Mineral.
Q. Who is your Local Chairman?
A. T. A. Kennedy.
Q. That is your Local Chairman?
A. Yes, sir.
Q. Who is your General Chairman that Mr. Kennedy reports to?
A. Mr. Paschal.
Q. Mr. Paschal?
A. Yes, sir.
Q. Where is his office?
A. Louisville.

Q. In Louisville, Kentucky?

A. Yes, sir.

Q. Are you a member of the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. Now, do you belong to either of the other Railroad Brotherhoods?

A. No, sir.

Q. How long have you been a member of that Brotherhood?

A. I was in the Engineers a while. I will say the last time I was with the Firemen I have been in there approximately 3 or 4 years. I don't know exactly, I would have to check the record on that.

Q. You are a member at the present time?

A. Yes, sir.

Q. Were you a member on the 23rd of October, 1955?

A. Yes, sir.

Q. Did you attend a meeting that was held at Mr. Parker's house on the afternoon of October 23, 1955?

A. Yes, sir. I did.

Q. What day of the week was that meeting held?

A. On Sunday.

Q. On Sunday?

A. Yes, sir.

Q. About what time, do you recall, what is your best recollection, that meeting was held?

A. Well, I think it was around 4:30 or shortly after. I think that was the time on it. I got there, however, shortly after 4:00 o'clock, some time between 4:00 and 4:20.

Q. Now where at Mr. Parker's, on Mr. Parker's premises was the meeting held?

A. Well, I guess it would be called the basement. In other words, it was not in the main living part of the house, it was in the garage or basement.

Q. In the garage or basement?

A. Yes, sir.

Q. Well, do you recall some of the people who were there?

A. Well, yes, sir.

Q. Will you mention as many as you now recall that were there?

A. Well, there was myself, Kennedy, Vann.

The Court:
Who was that?

The Witness:
Vann.

Mr. Simpson:
V-a-n-n?

The Witness:
V-a-n-n, Fleming, Grissom.

Q. Mr. Fleming and Mr. Grissom?

A. McCutcheon.

Q. McCutcheon?

A. Mr. Parker, Otts, Thomas, Southerland, and—Sutterlin and Southerland.

Q. All right.

A. Mr. Brown.

Q. Is that Mr. J. M. Brown, Jr?

A. Yes, sir. Hall.

Q. Mr. M. L. Hall?

A. Yes, sir.

Q. Or do you know his initials? Do you see Mr. Hall here in the Courtroom?

A. Yes, sir.

Q. One of the Defendants over here?

A. Yes, sir. Mr. Letchman.

Q. Letchman, all right.

A. Mr. Barnett.

Q. Mr. Barnett?

A. Yes, sir, Mr. Weldon.

Q. Mr. Weldon?

A. Yes, sir. Did I call Mr. Baum?

Q. I don't think you did.

A. Well, Mr. Baum.

Q. Mr. Baum?

A. Yes, sir.

Q. Do you recall any others, or were there others there?

A. Yes, sir, there was more there.

Q. Do you recall now who they were?

A. Did I name Otts?

Q. Well, was he there?

A. Yes, sir.

Q. I have forgotten.

A. Mr. Thomas.

Q. Mr. J. B. Otts, Jr?

A. Mr. Reese Thomas.

Q. Mr. Reese Thomas?

A. Yes, sir.

Q. A. R. Thomas?

A. Yes, sir.

Q. These men that you mentioned, are they the men that are sitting here in the Courtroom as Defendants in this case, is that right?

A. Yes, sir.

Q. Now, were there others besides them?

A. Yes.

Q. Or do you recall?

A. Well, there was some more there that probably I didn't see, and some fellows that I didn't know.

Q. About how many in all would you say were there?

A. Well, I would say approximately in the neighborhood of 15 or 20 men.

Q. 15 or 20 men?

A. Yes.

Q. All right.

A. Or maybe more, but I would say approximately that.

Q. Were they already in the basement or did you go in the basement with them when this meeting started?

A. No, sir, I was one of the first ones there.

Q. All right.

A. I went upstairs with Mr. Parker to start with, and then we came down out of the living room and they assembled, some more came up, and they assembled out there and finally we went into the basement.

Q. Went into the basement?

A. Yes, sir.

Q. When you got in there, these 15 or 20 men, did anybody kind of take charge of the meeting?

A. Yes, sir.

Q. Who did?

A. Mr. Otts.

Q. That is Mr. J. B. Otts, Jr.?

A. Yes, sir.

Q. Do you remember what, if anything he did to start off with?

A. No, I don't remember, just what he did to start with. In other words, the meeting wasn't called to order legally, as they usually do, a meeting is.

Q. Yes.

A. It was not called legally.

Q. Now, did Mr. Otts do anything or read anything or say anything?

A. Yes, he read some kind of a letter or statement or something there. I don't remember the contents of it, but he read something.

Q. He read something to the meeting?

A. Yes, sir.

Q. Do you recall anybody else saying anything?

A. Well, there was a good bit said but I don't recall too much of it directly.

Q. Well, what was it said about?

A. Sir?

Q. Do you remember the subject of the discussion?

A. Well, it was in regard to the elimination of the hostler helpers jobs out at Boyles.

Q. In regard to the elimination of the hostler helpers jobs out at Boyles?

A. Yes, sir.

Q. What about that?

A. They was replacing them, the Company was going to replace them with laborers, the best I remember.

Q. That was what was said there?

A. Yes, sir.

Q. Now then did anybody say anything about doing anything about it?

A. Well, they were talking about striking on account of it in other words, they said if they got by with that, why then the firemen would be pulled off the job, first one thing or another.

Q. First one thing and then another?

A. Yes, sir.

Q. All right. In that discussion do you recall anybody else besides Mr. Otts that said anything that you recall?

A. Well, they was more or less in a group, and I wasn't up in the group, and the discussion that went on I couldn't verify as to just exactly what was said over there in the group.

Q. Well now you had been asked to come to that meeting by whom?

A. Mr. Kennedy.

Q. Did Mr. Kennedy say anything at that meeting?

A. Well, yes, sir, he did.

Q. Do you recall anything that he said?

A. Yes, sir, he told the men along in the meeting, I don't know just how far along, but in the meeting there he told them any kind of a strike would be illegal at that time.

And he asked them to take it up legally, through proper channels, if they were going to strike. In other words, anything that they would do there just off momentarily would be wrong, and handle the situation properly, through local officials or legally, whichever way it was.

Q. Did the meeting agree with him on that?

A. No, sir, they didn't agree to that.

Q. What was said, and what was done about that?

A. Well, they finally agreed to set a strike at 9:00 o'clock Sunday night.

Q. At 9:00 o'clock that night?

A. That's right.

Q. To call a strike at 9:00 o'clock that night?

A. That's right.

Q. Now, when they did that, did they call for any pickets to go on duty?

A. Yes, sir.

Q. What was done about that?

A. Well, the best I remember they asked for pickets, you know, volunteer, hold up their hands.

Q. I see. Well, did you hold up your hand?

A. No, sir, I did not.

Q. Did any of them hold up their hands?

A. Yes, sir, there was, I don't know how many, I didn't count them, but there was a good many of them held their hands up. And there was probably some that didn't.

Q. All right, sir.

A. At least I was one of them.

Q. Did anyone say anything about the men that were not willing to picket, whether they ought to be there or not?

Mr. Taylor:

We object to leading the witness.

The Court:

I sustain the objection.

Q. Did anybody say anything then about the men who did not hold up their hands?

A. Well, yes, sir, there was something said, but now who said it, I don't know about that.

Q. I won't ask you who said it, but what was it that was said about that at that meeting?

A. They said that anybody that didn't want to picket, take their part as a picket and so on, that they wasn't welcome at the meeting.

Q. You couldn't tell us who said that?

A. No, sir, I can't.

Q. When that was said to you, what did you do?

A. Well, momentarily Kennedy and myself and Vann left.

Q. Momentarily?

A. Yes, sir.

Q. All right, you all left?

A. Yes, sir.

Q. When you left the meeting, what did you do? When were you due to go back on duty?

A. Well, I was on the Extra Board, subject to call.

Q. You were subject to call?

A. Yes, sir. When my turn got first out, why then I was subject to be called wherever they might need me.

Q. I see. Then did you do anything about checking yourself off of the Extra Board?

A. Yes, sir.

Q. What did you do?

A. After I talked with Kennedy and Vann for a little while, not very long, well, I drove directly to the roundhouse and contacted the engine dispatcher and had him put me on the Off Board.

Q. On the Off Board?

A. Yes, sir.

Q. That means you were not ready to go on service?

A. I was out completely.

Q. You were out completely?

A. Yes, sir.

Q. How long after you left the meeting, and after you had heard this strike set for 9:00 o'clock that night, how long was it before you went down and did that?

A. It was shortly after 5:00 o'clock. I think, the best of my knowledge, that I laid off before 5:30.

Q. Before 5:30?

A. With the engine dispatcher.

Q. Now, who was the engine dispatcher?

A. Mr. Jordan.

Q. Mr. Jordan?

A. Yes, sir.

Q. Did you tell him then why you were laying off?

A. Well, he asked me.

Q. All right, what was said?

A. Well, I told him, I says "I've got business out of town", and I did.

Q. You had business out of town?

A. Yes, sir, and I went out of town.

Q. And you went out of town that night?

A. Next morning.

Q. Next morning?

A. Yes, sir.

Q. Now, you had not intended to quit work, or come off the Extra Board, had you?

Mr. Pettus:

We object to that, what his intention was.

The Court:

I sustain the objection to the intention.

Q. Do you know who else that was in that meeting had themselves checked out as sick or going out of town or something like that that night?

A. I beg your pardon?

Q. Do you know who else was in that meeting up there and heard this statement that you talked about, strike at 9:00 o'clock, do you know who else was at that meeting and checked out as sick or going out of town?

A. You mean laid off?
Q. Yes, on that afternoon.
A. Well, I know Mr. Kennedy and Vann laid off.
Q. You know Mr. Kennedy and Mr. Vann did?
A. Yes, sir.
Q. All right.
A. But they didn't go to the roundhouse with me. I think—I went, but I won't say how they laid off, but they laid off.
Q. You went there in person?
A. I went there personally.
Q. Were you scared to work there?

Mr. Pettus:
We object to that.

Q. During that lay off?

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Pettus:
We except.

A. You want me to answer that question?
Q. Yes, sir.
A. Well, yes, sir, any kind of strike I would be scared to work on account of bodily harm.
Q. Scared of what?

Mr. Pettus:
I move to exclude the answer on the same ground.

The Court:
I didn't get the answer.

(The answer was read.)

Mr. Simpson:
On account of bodily harm. All right.

Mr. Pettus:
We move to exclude that answer.

The Court:
I will exclude everything except the affirmation of "Yes, sir."

Mr. Simpson:
We except.

Q. You were in the Army and in active service for about 5 years, weren't you?
A. Yes, sir, approximately, just short of 5 years.
Q. Just short of 5 years?
A. Yes, sir.
Q. You said you would have been afraid to go to work there that night?

Mr. Pettus:
We object to that, leading and suggesting.

Mr. Simpson:
You can have the witness.

The Court:
I sustain the objection.

Cross Examination.

By Mr. Taylor:
Q. Mr. Logan, when did you last work before you went to this meeting Sunday afternoon?
A. I came in on Train No. 94 out of Anniston, arriving at Boyles, I would have to check the register on that, but it was between 4:00 and 5:00 o'clock p.m., Sunday morning.
Q. What time did you leave Anniston on that run?
A. I would have to check the register on that. Call time is 9:30.
Q. Was Mr. Kennedy on that run with you?
A. No, sir.
Q. Had you heard anything before you left Anniston about any work stoppage in Birmingham?
A. I sure didn't.
Q. All right, sir. Before you went to that meeting on Sunday afternoon, had you heard about the abolition of the hostler helpers jobs?
A. No, sir. Well now Mr. Kennedy called me, that's the first I knew about it. He woke me up about noon of Sunday before the strike.
Q. And that is the first you knew about the abolition of the hostler helpers jobs?
A. Yes, sir.
Q. You hadn't seen that bulletin that was posted down there at the Boyles Yard?
A. If it was out there I didn't read it. I was in a hurry to get home.

Q. Did anybody ever show you a list of the people that were supposed to have been at Shorty Parker's place?

A. I beg your pardon?

Q. Did anybody ever show you a list of names and tell you that they were supposed to have been at Shorty Parker's place?

A. That evening?

Q. No, any time any time since then up to now.

A. Why yes, I have named them over.

Q. I say did anybody ever show you a list of names and tell you that these men were supposed to have been at Shorty Parker's house?

A. That is supposed to have been there? No, I never seen a list that was supposed to have been there.

Q. Did anybody show you—

A. I saw a list of the men that was there, the men I think was there.

Q. Who showed you that list?

A. A lawyer.

Q. When did the lawyer show it to you?

A. Saturday.

Q. And that is how you were able to name off those names here, wasn't it?

A. No, sir.

Q. Based on that list?

A. No, sir.

Q. Did you ever tell anybody who you saw at the meeting?

A. I didn't talk about that meeting much.

Q. When was the first time you told anybody you saw anybody at that meeting?

A. Well, Mr. Robey took a statement from me, I forget what day, I think it was the first part of

February, about the 6th I believe, and that is the man that I told about it.

Q. Did you name all of these people that you named, when you talked to Mr. Robey, that you have named from the witness stand?

A. Yes, sir.

Q. How long do you think you stayed at that meeting, Mr. Logan?

A. How long did I stay at that meeting?

Q. Yes, sir.

A. I would say approximately 30 to 40 minutes.

Q. Did you leave at the same time Mr. Vann left?

A. Yes, sir, and Mr. Kennedy.

Q. Now Mr. Vann heard everything that you heard at that meeting, didn't he?

A. Well now its possible that he heard some things that I didn't hear, and I might have heard some things that he didn't hear.

Q. Well what I mean is you all were both there the same length of time, is that correct?

A. That's right. Well I got there—we were in the meeting at the same time. In other words, I arrived at Mr. Parker's ahead of him but we was at the meeting at the same time.

Q. And you left at the same time, is that correct?

A. Yes, sir.

Q. Now this was just an informal gathering over there wasn't it, Mr. Logan? There wasn't anybody that said "The meeting will now come to order"?

A. No, sir.

Q. And that sort of thing?

A. No, sir.

Q. And there wasn't anybody that took the lead in the discussion, was there?

A. Well, I would say Mr. Otts did.

Q. Weren't there little groups of you talking all around all the time?

A. Yes, that's right, they was more or less grouped up, that's right.

Q. They were talking at the same time?

A. Yes, sir.

Q. One group would be talking over here and one group would be talking over there?

A. More or less.

Q. Now I believe you said that after you left the meeting that you talked to Mr. Kennedy and Mr. Vann, is that correct?

A. That's right. We left together.

Q. You three decided to call up and lay off, is that correct?

A. Well, I went down there and laid off. They probably called in and laid off. I don't know how they laid off, but I went to the roundhouse personally and laid off.

Q. You and Kennedy and Vann made that decision together, is that right?

A. Yes, we decided to lay off.

Mr. Taylor:

That's all.

Mr. Simpson:

That's all, Mr. Logan.

The Court:

Come down. Do you have any further use for this witness?

Mr. Simpson:

No, sir, I would like to ask that he be excused.

The Court:
The witness will be excused unless there is objection.

(Witness excused.)

Mr. Simpson:
Mr. Strong, let me have that deposition of Parker, please.

Your Honor, I have here the deposition of one of the Defendants in this case, Mr. H. K. Parker, and I would like to introduce the gentleman, beginning on Page 57, and read to the jury down about two-thirds of the way of the page.

Mr. Pettus:
Let me check that Mr. Simpson.

Mr. Simpson:
All right. I will give you the question beginning and the question ending. You see the question about where "Did you say anything?" about two-thirds of the way down on page 57, "Did you say anything about you were going to try to help get them their jobs back?", about two-thirds down?

Mr. Pettus:
Yes, I've got it.

Mr. Simpson:
All right. Now then from there through the balance of 57, all of 58 and 59 down to the words "Q. But it was before dark that they had adjourned", and "A. Yes, sir", do you see that?

Mr. Pettus:
Yes, sir.

Mr. Simpson:
I would like to offer that much of this deposition in evidence, may it please the Court, and if I may I would like to read it.

The Court:
All right. You can offer it. Of course, you have a right to offer any other part of it in evidence that you want.

Mr. Pettus:
What is that, Your Honor?

The Court:
I say you can offer any other part of it if he offers part of it.

Mr. Pettus:
Thank you, Your Honor.

The Court:
All right.

Mr. Simpson:
May I read this now, Your Honor?

The Court:
Yes, you may read it.

Mr. Simpson:
This is a part of the deposition, Your Honor, not all of it by any means:

"Q. Did you say anything about you were going to try to help them get their jobs back?"

Mr. Simpson:
Your Honor, may I state to the jury that these are questions that were asked by counsel of the Defendant Parker?

The Court:
Yes, this is a pretrial deposition, isn't it?

Mr. Simpson:
Yes, sir.

The Court:
Yes. Gentlemen, each party has a right to take the deposition of the other in a pretrial proceeding before a Commissioner or Notary acting as a Commissioner, and that was done in this case. Mr. Parker's testimony was taken and he is going to read part of it to you at this time.

Mr. Simpson:
We offer this part:

"Q. Did you say anything about you were going to try to help them get their jobs back?
"A. We said we were going to try to get their jobs replaced, try to get them put back.
"Q. You were going to try to get them put back on their jobs?
"A. Yes, sir.
"Q. Did you say that you were going to try to help?
"A. No, I don't remember what—

"Q. Was that agreed to by all of you, that you were going to try to help?

"A. Yes, sir.

"Q. All of you agreed you were going to try to get them to put them back on their jobs?

"A. Yes, sir.

"Q. Did you discuss how you were going to help them?

"A. No, sir, that wasn't brought up.

"Q. How were you—you were going to try to help them to get their jobs back. How was it you were going to help them get their jobs back?

"A. Well, individually I could not, but we were going to help them.

"Q. You were going to help them?

"A. We were all going to try as a body to try to get the jobs put back.

"Q. They all agreed there together that you were going to try to help them get their jobs back?

"A. Yes, sir.

"Q. All of you together, is that right?

"A. Yes, sir.

"Q. You along with the rest of them, the group of you were going to do this?

"A. Yes, sir.

"Q. Had you discussed how you would accomplish this, how you were to get them put back, the group of you?

"A. No, sir,

"Q. Did anybody ask there what can we do to get these men's jobs put back on the job?

"A. If that was brought up I don't remember it.

"Q. Well, what was said with respect to getting the jobs back?

"A. Well, we just agreed, all of us, as a whole, to try to get the jobs put back. We didn't specify no—can't say no certain man, or made no time when we were going to say it or nothing, just said we were all going to try to get them put back.

"Q. When were you going to do that?

"A. Some time in the near future after that meeting.

"Q. Now about what time did the meeting adjourn?

"A. Some time in the afternoon.

"Q. And about what time in your best recollection?

"A. It was before dark, I don't remember what time it was.

"Q. But it was before dark that they had adjourned?

"A. Yes, sir."

I offer that part of the deposition, if Your Honor please.

The Court:

All right. Call your next witness.

Mr. Gibson:

Mr. L. P. Jordan.

L. P. JORDAN, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:

Q. Is this Mr. Lowell P. Jordan?

A. Yes, sir.

Q. Where do you live, please, sir?

A. 1431 Sloan Avenue, Tarrant.

Q. Do you remember the occasion in October, of 1955, when there occurred at Boyles a strike or work stoppage or something of that nature?

A. Yes, sir.

Q. Were you an employee of the L&N Railroad Company?

A. Yes, sir.

Q. Were you at work in the Boyles Yard that night?

A. Yes, sir.

Q. What do you call the shift that you were working?

A. You mean what time I go to work and get off?

Q. What do they designate that, and what were the hours?

A. 3:00 to 11:00.

Q. Is it referred to as a certain shift?

A. I don't get you there.

Q. Well, first, second, third, fourth?

A. Second shift, yes, sir.

Q. What time had you gone to work that day?

A. Well, I got there about 2:30. I actually went to work at 3:00.

Q. During the time that you were at work, will you tell these gentlemen whether anything unusual occurred?

A. Well, yes.

The Court:

Is this on Sunday?

Mr. Gibson:

Yes, sir.

The Witness:

Yes, sir.

Q. All right.

A. There was something unusual occurred all right. Now, I don't know which way you want it there.

Q. Did you receive any telephone calls during that shift?

A. Yes, sir, plenty of them.

Q. Were there an unusual number of telephone calls at any time during that shift when you were at work?

A. Well, I wouldn't say exactly unusual. Of course, there was a few more than what we ordinarily got.

Q. Now, as engine dispatcher, tell these gentlemen here in a general way what your duties were?

A. Well, the engine dispatcher, as a general rule, is calling his engineers and firemen, answering the telephone, doing other clerical work in the office.

Q. All right.

Mr. Pettus:

Will you speak up? I can't hear you very well.

The Witness:
All right.

Q. Do you have any records that you keep, or anything of that kind?

A. Yes, sir, there is different records there that we keep all the time.

Q. And if a man calls up and asks you to put him back on, do you make some record of that?

A. Yes, sir.

Q. Or did you then?

A. Yes, sir.

Q. And if a man calls up and asks you to take him off, either a regular job or road job or Extra Board, would it be your duty at that time to do that also?

A. Yes, sir.

Q. Tell the jury whether or not it would also be your duty to make some record of that incident, that telephone call?

A. Yes, sir, usually, if he is laying off we specify a reason, why, and that is put on the book by his name, why.

Q. How about the time, do you make any record of that?

A. Yes, sir, we put a time of the call, when we complete the call, well then naturally we look at the clock, and that time is usually put at the end of whatever he laid off for, or by his name.

Q. Now, who did that writing down there on the second shift on Sunday, October 23?

A. I did.

Q. What did you write it up in?

A. That book you are holding there.

Q. Is that provided you by your employer to make those entries in?

A. Yes, sir.

Q. I show you a book with a cardboard back on it, Mr. Jordan?

A. Yes, sir.

Q. Will you tell the jury whether you ever saw that book before?

A. Yes, sir, I saw it.

Q. What is that book?

A. Well, it is referred to at the L&N as the Martin Book, which is a lay off book, that is the railroad term, what we call it.

Q. I show you some words at the top of page 4 "Laid off 10-23-55"?

A. That's right.

Q. Who made that writing?

A. That writing is put on there at 12:00 o'clock midnight by the third shift man.

Q. Before you had come on?

A. Yes, sir. Well, that is just after I went off.

Q. Oh, yes.

A. Now this was on there before I went on at 3:00 o'clock. In other words, our hours run from 12:00 midnight to 12:00 mignight. This was put on, the third shift man put this on. He turns over and starts this off at 12:00 o'clock.

Q. Now indicating on there a certain line which reads this way: "Fireman T. A. Kennedy buss"?

A. That would be business.

Q. 5:15?

A. Yes, sir.

Q. Who made that entry, if you know?

A. I did.

Q. Where did you get that information?

A. From Mr. Kennedy over the telephone.

Q. I show you an entry just below that, I am pointing to it with my finger, "Fireman D. C. Vann, sick", 5:16?

A. Yes, sir.

Q. Who made that entry?

A. Mr. Vann.

Q. You misunderstood my question.

A. Oh.

Q. I said who made that entry.

A. Oh, I did, I did.

Q. And where did you get that information?

A. From Mr. Vann over the phone.

Q. Below that I show you another fireman, W. L. Logan, "X B". What does that mean?

A That means he is on the Extra Board. No reason. He didn't give any reason or why at all.

Q. The time, 5:25?

A. That's right.

Q. We have another one here, and then just below that I point out another, Fireman M. L. Hall, X Board, Extra Board?

A. That's right.

Q. Time?

A. 5:25.

Q. If you will, be good enough to read the next one?

A. Engineer H. E. Southerland, Job No. 48, that's what it is, sick.

Mr. Simpson:

Now I couldn't hear, sickness was it?

The Witness:

Yes, sir, sick.

Q. All right, sir. Now this one right here?

A. Hostler C. L. McCutcheon. In other words, we didn't put it over here because he is a hostler and we mentioned him as a hostler here.

Q. Yes, sir.

A. 5:45.

Q. Reason?

A. Sick.

Q. All right, sir, this one now?

A. Fireman J. M. Weldon was on the Extra Board, laid off sick at 5:50.

Q. And below that?

A. R. A. Sutterlin, Job 57, laid off sick. 5—that should have been about 5:51, but I've for them both 5:50.

Q. All right, next?

A. That is Fireman A. R. Thomas. He is a hostler, 5:53, sick.

Q. Now, I think you said you made all of those entries?

A. Yes, sir, from here down through here (indicating).

Q. Was the information you entered on that book received by you in the regular course of your duties over the telephone?

A. Yes, sir.

Mr. Gibson:

We offer the book just referred to.

The Court:

That portion of the book, unless there is objection, will be admitted.

(Plaintiff's Exhibit No. 1 was marked for identification.)

The Court:
What pages are you offering there?

Mr. Gibson:
It is not a page.

The Court:
Well, the date shows, the date shows on there, doesn't it?

Mr. Gibson:
The date is 10-23-55.

Mr. Simpson:
That will be Plaintiff's Exhibit 1, will it not?

The Clerk:
Yes, sir.

Mr. Gibson:
That's all.

Mr. Pettus:
Let me have that book. I would like to see it.

Cross Examination.

By Mr. Pettus:

Q. Now, on that same page that he was reading from here is a fireman named C. Pearson or Persons, III, 5:46; and a man by the name of C. E. Warren, sick, and Huckaby was sick, is that right?

A. Yes, sir.

Q. Now as engine dispatcher where was your office Mr. Jordan? Is it Jordan or Jordon?

A. Either one, it don't make any difference. I n called both.

Q. Where was your office?

A. Well, we are in one corner of the engineer and firemen's washroom.

Q. One corner of the engineer and firemen's washroom?

A. Yes, sir.

Q. And was it just the engineers and the firemen that it was your duty to call and to report in like this?

A. Yes, sir, that's all.

Q. In other words, you didn't handle the trainmen and other crew members, is that right?

A. No, sir, we only have the engineers and the firemen.

Q. You only have the engineers and the firemen?

A. Yes, sir.

Q. Now, Mr. Gibson asked you about anything unusual happening that evening with regard to men calling in. Was there anything else unusual that happened a little after that with regard to instructions to call crews for trains?

A. I don't think I get you.

Q. Well, let me ask you this, were there any men called for any train after No. 4?

A. No, sir.

Q. What time was Train No. 4 supposed to be called?

A. Well, it was called for 8:55. I don't remember. I might have given it out at 7:50—no. I mean 6:55 is the ordinary call time, 2 hours.

Q. 2 hours?

A. But sometimes I give it out a few minutes before that.

Q. But ordinarily you call 2 hours before the train time?

A. Yes, sir.

Q. And there were no calls made on Sunday evening for any train later than No. 4, which was set for 8:55, is that right?

A. That's the last call I put out.

Q. Ordinarily you would have been calling throughout the evening, would you not?

A. Yes, sir.

Q. But on this particular evening after about 7:00 o'clock there was no further call, is that right?

A. Not after No. 4 was called, no, sir.

Q. Not after No. 4 was called?

A. That was the last thing that was give out.

Q. And that stopped about 2 hours before 8:55?

A. Yes, sir.

Q. Who is in the office where you are, Mr. Jordan?

A. Well, there's not supposed to be anyone outside of the roundhouse foreman. Every now and then one might step in to get a drink of water or something.

Q. Who was the roundhouse foreman on duty on October 23, 1955?

A. Mr. C. S. Crow.

Q. Mr. C. S. Crow?

A. Yes, sir.

Q. What was your shift that evening?

A. 3:00 to 11:00.

Q. 3:00 to 11:00?

A. Yes, sir.

Q. Did you leave before 11:00?

A. Yes, sir.

Q. About what time did you leave?

A. 9:20 exactly.

Q. 9:20?

A. Yes, sir.

Q. Did you go out by yourself?
A. Yes, sir.
Q. Did anybody tell you to go out?
A. No, sir.
Q. You just got up and walked out?
A. That's right.
Q. And what had happened before you walked out, if anything?
A. Well, everybody had vacated the washroom and there wasn't nobody there. I figured I wasn't needed, so I walked out too.
Q. And you just got up and walked out by yourself, is that right?
A. Yes, sir. Naturally I straightened up the books and left the office in shape before I went out.
Q. Was there anybody left there when you walked out that you know of?
A. No, not that I can remember was there a soul in the washroom when I walked out.
Q. Was there any L&N official or employee still there when you walked out?
A. Well now their office is about a quarter of a mile from us. I couldn't say on that. They could have been over there.
Q. But at 9:20 you just got up and walked out, is that right?
A. Yes, sir, there wasn't a soul around there.
Q. Had you seen or heard of anybody else walking out prior to that time?
A. Well, yes, I had heard that they was all—in other words, wasn't a soul around there, they had gone, yes, sir.
Q. But no one told you to walk out?
A. No, sir, I—there wasn't a soul told me.

A Juror:
Judge, do I understand that this man is an engine dispatcher?

The Witness:
Yes, sir.

The Court:
That's right.

Mr. Pettus:
Let me see that book again.

The Court:
The page is marked there, No. 10 at the top.

Mr. Pettus:
Right.

Q. On October 22, are there lay offs on that date too?
A. Yes, sir.
Q. There are?
A. Yes, sir.
Q. In other words, the—
A. This is your lay offs, and that is where they report.
Q. That is where they report?
A. Yes, sir.
Q. Now on October 22 Mr. A. B. Luster laid off at 11:07, and all of these here?
A. Yes, sir.
Q. These names, as you go down, on October 22, Mr. Purkey laid off, did he?
A. Yes, sir.

Q. That is that name there, 510?
A. Yes, sir, C. B. Purkey, and then I started out.
Q. Mr. Schilleci laid him off?
A. Yes, he was on that Extra Board, on mileage.

Mr. Pettus:
We ask that the lay off page for October 22, 1955, Plaintiff's Exhibit 1, be marked for identification.

(Defendants' Exhibit No. 2 was marked for identification.)

Mr. Pettus:
We haven't offered that yet, we just have it marked for identification.

Q. Mr. Jordan, what instructions in the usual course of business did you receive to call trains, like when you were calling, you said this evening you called Train No. 4; who gave you those instructions?
A. The chief caller.
Q. The chief caller?
A. Yes, sir.
Q. Who was that?
A. That night Willie Wren was on duty.
Q. He was on duty?
A. Yes, sir, he was chief caller.
Q. Was he your superior?
A. No, sir, he is not over me. We work in co-operation but he is not a superior to me, no, sir.
Q. Well, how would instructions come down to you to call a train?
A. Well, to start off at the starter, is that what you want?
Q. Yes, sir.

A. And on down the channel?

Q. Yes, sir.

A. Well, to start off with I reckon it is the Yard Dispatcher.

Q. The Yard Dispatcher?

A. In other words, his clerk gives him the line of cars that they have, and they want say a chain gang south. Then he calls the chief caller, "Give me a chain gang south."

The chief caller calls me, and wants a crew and engine for a chain gang south. I give him an engineer and fireman and maybe an engine then if the foreman has given me an engine. If he has not, then later I give it to him.

He then takes those two, puts them with the engine crews and gives it to the call boy, and the call boy then calls the crew.

Q. And what official makes the decision that there is a train going south, in other words, to run a train?

A. The Yard Dispatcher.

Q. Who is that?

A. Well, that night it was—what's the name? It was Albert—

Q. Albert Johnson?

A. Yes, sir, Johnson.

Q. Is he the Assistant Yard Master?

A. I don't think he is listed as Assistant Yard Master.

Q. No? What is his title?

A. Train Dispatcher I believe.

Q. Train Dispatcher?

A. Yes, sir, Train Yard Dispatcher or Train Dispatcher.

Q. But you received instructions when you are to call for a train going out, do you not?

A. Yes, sir.

Q. On this particular night you received no instructions for any train later than No. 4?

A. That's the last call I had.

Mr. Pettus:

That's all.

Re-Direct Examination.

By Mr. Gibson:

Q. Mr. Jordan, you were in the Courtroom today, this morning, when the witnesses were all sworn, were you not?

A. Yes, sir.

Q. And received instructions from Judge Grooms?

A. Yes, sir.

Q. Have you been in attendance out in the hall or in the witness room except during the noon recess ever since?

A. Yes, sir.

Q. I will ask you whether or not shortly before you came in this room, this Courtroom to get on the witness stand one or more persons came to you and attempted to talk to you about what your testimony would be?

A. Not that I know of, no, sir.

Q. That did not happen?

A. No, sir, not that I know of.

Q. You are sure?

A. We have been laughing and joking out there, but so far as talking to me about my testimony, no, sir.

Mr. Gibson:
All right.

The Court:
All right, this witness will be excused unless there is objection. Is there any objection?

Mr. Pettus:
No objection.

The Court:
All right.

(Winess excused.)

The Court:
Call your next witness.

Mr. Gibson:
Mr. Ben Mitchell.

BEN MITCHELL, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:
Q. Is this Mr. Ben Mitchell?
A. Yes, sir.
Q. Ben M. Mitchell?
A. Yes, sir.
Q. Where do you live, Mr. Mitchell?
A. I live at Evansville, Indiana now.

Q. Where were you living in October, of 1955?
A. In Birmingham.
Q. What was your occupation?
A. Trainmaster, Birmingham, Boyles Terminal.
Q. Speak up now, please, sir. That gentleman down there sitting by himself has to hear you. If he can hear you the rest of us can.

A Juror:
Trainmaster?

The Witness:
Trainmaster, Birmingham, Boyles Train Yard.

Q. Was that for the L&N Railroad Company?
A. Yes, sir.
Q. How long have you been with the L&N Railroad Company?
A. Since March, 1926.
Q. Did you start out with them as Trainmaster?
A. No, sir, I started out as a switchman.
Q. During the time you have been promoted?
A. Yes, sir.
Q. What is your ~~present position~~ with the Railroad?
A. Trainmaster.
Q. Where?
A. Evansville.
Q. In October, of 1955, what were your usual office hours or working hours?
A. Usually from 8:00 until 5:00, and on Saturday about 1:00 or 2:00 in the afternoon, and on Sunday to noon.
Q. Where was your office supposed to be?
A. Boyles.

Q. Where in the Boyles installation area was your office located?

A. In the Yard Office.

Q. Were there other people employed in the Yard Office?

A. Oh, yes, sir, quite a few.

Q. Did they work the same hours you did or were they on shifts?

A. They were on shifts, continuous shifts. Of course, on Saturday and Sunday some of the jobs were blank.

Q. What titles did they have, or what sort of work did they do?

A. We had our clerical force in the office, and our Yard Dispatchers in the office, chief callers that call crews. Our records are maintained there.

Q. Were you at Boyles on that Sunday night that I referred to?

A. Yes, sir.

Q. As October 23 at or about 8:30 or 9:00 o'clock?

A. Yes, sir.

Q. I understood you to say your office hours were 8:00 to 5:00. Had you been working continuously up until 8:30 or had you been away and come back?

A. I had been away and returned I imagine around 6:00, something like that.

Q. Was the Boyles Yard operating normally, in the usual way when you left it at 5:00 o'clock?

A. Yes, sir.

Q. Tell the jury whether or not that was also true when you returned to it at 6:00 o'clock?

A. Yes, sir, it was.

Q. Did any of your clerks protest to you or express any disagreement with the action of the Railroad Company with reference to certain hostler helpers?

A. I can't say that they did. I don't remember it.
Q. About how many of them worked in that office at that time?
A. That was around nine.
Q. During the night or evening of Sunday, tell the jury whether or not anything unusual occurred?
A. What time do you have reference to?
Q. About 8:30 or 9:00 o'clock.
A. Well, probably about that time there was three men that came in the Yard Office and—

The Court:
Two men?

The Witness:
Three. And said "We're shutting the Railriad down. Everybody go home."

Q. Did you recognize those men?
A. Yes, sir.
Q. Will you name them, please, sir?
A. Myrick and Baum and Davis.

Mr. Pettus:
I didn't get those names.

A. Myrick and Baum and Davis.
Q What was Mr. Myrick's job?
A. He is a fireman, locomotive fireman.
Q. What is Mr. Davis' job?
A. Locomotive fireman.
Q. What is Mr. Baum's job?
A. He is a fireman also.
Q. Look around the Courtroom and tell us whether you see him in here?
A. I see Mr. Davis.

Q. Do you know Mr. Baum?

A. Yes, sir, I see him over there.

Q. About what time of night did you say that was?

A. About 8:30 to 35, something like that, 45.

Q. Was that remark addressed to you, that statement that was made?

A. Well, I would say yes, as well as to everybody else in the office too.

Q. How were the three men dressed? I mean were they in work clothes or street clothes, if you recall?

A. I imagine they would be in what you call street clothes.

Q. Do you remember about that definitely either way?

A. Yes, sir, I would say so.

Q. All right. When Mr. Baum and these other two men came in I will ask you whether or not either one of them had anything in his hand?

A. Two of them had some short sticks, yes, sir.

Q. Who were those two?

A. Baum and Myrick.

Q. About what size sticks were they?

A. Oh, something like an inch in diameter, about 18 inches to 2 feet long.

Q. Have you ever seen anything like that around the Railroad property, the sticks that they had?

A. They don't use them in the service of the Railroad, no, sir.

Q. That's what I mean?

A. No, sir.

Q. Do you know why they were around with those sticks about the size you described?

A. No, sir.

Q. Did the clerks do anything after they heard that statement?

A. They got up and walked out as quickly as possible.

Q. That is a small room, isn't it?

A. About as large as this room right here.

Q. What tone of voice was the announcement you heard made in?

A. Well, I would say just the normal conversation, but loud enough for everybody to hear it.

Q. You were about as far away from the door as anybody, weren't you?

A. No, I was over at the chief clerk's desk, about 30 feet I guess from the door.

Q. Did you hear clearly what was said?

A. Yes, sir.

Q. I think you said the clerks then got up and left?

A. Yes, sir.

Q. What, if anything did you do?

A. Well, when they all started walking out I asked the chief clerk, who was Mr. Duncan, to wait until I could go and get my lunch, which I had prepared and brought over there, and then I would walk out with them, which I did.

Q. Mr. Mitchell, was that the first that you had heard about a walkout that night?

A. No, sir.

Q. What is the first you had heard about it?

A. Someone called me that afternoon around 2:00 o'clock I imagine and told me about it, said they was going to come off about 4:00. So I went on home then and got my lunch and changed clothes and came back. That's the reason I was at the office when this came off.

Q. You received a telephone call?

A. Yes, sir.

Q. Do you know who made that call?

A. No, sir.

Q. Did he identify himself?

A. No, sir.

Q. But he did tell you there was going to be strike come off?

A. He gave me that information and hung up, yes sir.

Q. Did you do anything about putting out the lights in the Yard Office?

A. No, they were turned off while I was going up the stairs after my lunch.

Q. That was your office, wasn't it?

A. Yes, sir. All of the lights in the whole office went out.

Q. Did you tell anybody to turn them out?

A. No, sir.

Q. Do you know who turned them out?

A. No, sir.

Q. When you got outside the Yard Office was there anybody else out there?

A. Oh, there were some 15 to 20.

Q. Did you recognize anyone in the group?

A. Well, just like I told you, I walked over with Duncan. He and I was the last two out. And Mr. Baum was there, and so was Myrick. We all walked over together.

Q. Did you have any conversation with Baum or did you hear Baum say anything out there outside of the Yard Office when you went out?

A. Mr. Gibson, I don't know; I can't say.

Q. Do you recollect about that?

A. Well, they was all—a lot of talking going on, and they shut the plant down, when they shut the Railroad down, and things of that kind.

Q. Do you remember who said that?

A. No, I don't believe I can say.

Q. Now, you and Baum and somebody else you say went on out together?

A. Well, Duncan and I were the last two. Of course, somebody was right ahead of us. All of us went on out. And Baum and Myrick and Davis, we were all right there together.

Q. Did you have any conversation with Baum as you were going out of the Yard?

A. I don't remember whether we did or not. That is, all of us were talking.

Q. All right, sir. Where did you go from there?

A. Went through the Yard to the highway, on out the gate, and went on home.

Q. That was Sunday night?

A. Yes, sir.

Q. At about what time?

A. I imagine that was 9:00 o'clock.

Q. Did you go to your office Monday morning?

A. I tried to but there was so many down there I couldn't, so I went to the Birmingham Office.

Q. About how many people were there when you arrived?

A. At the gate I imagine there was 15 or 18, something like that.

Q. Which gate was that?

A. Both of them, both gates, one at the Master Mechanics entrance, and the one we went out of that night.

Q. Did anyone say anything to you about whether or not you could go in?

A. Yes, sir, I believe it was Reese Thomas I believe told me we couldn't go in.

Mr. Taylor:
We move to exclude what he believes.

A. Sir?

The Court:
I sustain the objection.

Q. What is your best recollection about the name of the person who told you you couldn't go in?
A. Reese Thomas is the man that told me I couldn't go in.
Q. All right, sir. You know Reese Thomas?
A. Yes, sir.
Q. How long have you been knowing him?
A. I imagine 25 years, off and on.
Q. There were other men there you said with him?
A. Oh, yes.
Q. Were they just wandering around, or were they grouped up or bunched, or how was it?
A. They were just milling around the gate.
Q. Thomas was one of them?
A. Yes, sir.
Q. Do you recall that any other one of these Defendants was also there?
A. I don't remember.
Q. I'm talking about your first visit, or attempt to go to your office on Monday morning. You say you were down there?
A. No, sir, not at Boyles there, no, sir.
Q. What happened, what did you do next?
A. I went on to the Superintendent's Office in Birmingham.
Q. Where is that located?
A. 1909 Morris Avenue.

Q. Is the Superintendent's Office down on the street?

A. On the second floor.

Q. When you got down to Morris Avenue did you see any Railroad Company employees that you recognized there?

A. Yes, sir.

Q. Who were those people if you recall?

A. Reese Thomas was right there at the steps as I started in. And I don't know who the other man was on the other side of the steps.

Q. Do you remember what his job was, can you identify him in any way?

A. He was a fireman, I would say he was a fireman.

Q. What, if anything, passed between you and anyone else there on Morris Avenue when you went down to the Superintendent's Office? Did you have any conversation with anybody?

A. Yes, sir.

Q. Whom did you talk with?

A. Mr. Thomas.

Q. Just tell these gentlemen in your own words as well as you can what was said by Mr. Thomas, Reese Thomas, and what was said by you on that occasion?

A. Well, he asked me what I was going to go upstairs for, and I said that's my job to go up there to see Mr. Kirchner. He says there's nobody up there but Kirchner; you are not to go.

Q. Who is Mr. Kirchner?

A. He was Superintendent of this Division.

Q. You went down there to see him on Company business?

A. Yes, sir.

Q. And Mr. Thomas said "You are not to go up there"?

A. That's right.

Q. Is that right?

A. That is right.

Q. Did he touch you in any way?

A. Yes, sir, he pushed me back a little bit.

Q. What did you do then?

A. I turned and went on back up towards 20th Street.

Q. Was there anybody else down there in that immediate vicinity besides Reese Thomas and this other fireman?

A. Across the street there was, oh, something like six or eight, and Charlie Schilleci is the one I remember, only one I remember across there.

Q. What is Charlie Schilleci?

A. He is a locomotive fireman.

Q. Was he there?

A. Across the street, yes, sir.

Q. About how long did you stay around on Morris Avenue on Monday morning, on that visit?

A. Five minutes I would say.

Q. When you left there, where did you go?

A. I went around to the drug store and called Mr. Kirchner over the telephone.

Q. Did you then some time later leave that downtown area?

A. I went home. That's what he told me to do, yes, sir.

Q. Did you visit any of the premises of the L&N Railroad at any other time during Monday, October 24?

A. Yes, sir.

Q. Where did you go and what time, about?

A. Well, it developed that there was some livestock and perishables on the Yard that in this flurry we didn't think about.

Mr. Taylor:
We object to that and move to exclude that. That is a volunteer statement, what developed. He is not testifying to facts.

The Court:
He asked where he went.

Mr. Gibson:
Yes, sir.

The Court:
I don't believe he asked that question. I sustain the objection and grant the motion.

Mr. Gibson:
We except.

Q. To what installation of the Railroad Company did you go?
A. We went to the office, I mean the gate over there at the Master Mechanic's Office to gain admission to go in and get the waybills.
Q. What do you mean by waybills? Explain that.
A. Each car is accompanied by a waybill that shows what the shipment contains, and where it goes. Freight rates and all of that is on it.
Q. That happened about what time, your best recollection about it?
A. Oh, before lunch, about 11:00 o'clock say.
Q. Was the gate open or closed when you got there?
A. The gate was closed.
Q. That is what is called the Master Mechanic's gate?
A. Yes, sir.

The Court:

Where is that located, at Boyles?

The Witness:

Yes, sir, at Boyles. I don't know the name of that street.

Q. Is that right on Vanderbilt or off of Vanderbilt Road?

A. It is off, about a block off of it.

Q. You said I think the gate was closed?

A. Yes, sir.

Q. Was anyone with you when you went to see about the waybills?

A. Assistant Trainmaster Mr. Woelde.

Q. How did you get down there?

A. In an automobile.

Q. After you turned off of Vanderbilt Road and started down that little street or road towards the Master Mechanic's gate did you see any other automobiles?

A. An automobile passed us.

Q. What kind of car was that?

A. I can't say, I don't know whether it was a Ford or Chevrolet, some light car.

Q. Where did that car go?

A. Stopped up there in front of the gate, at the entrance to the Yard.

Q. Headed which way?

A. Headed west.

Q. Headed towards the gate?

A. Parallel with the gate.

Q. Alongside of the gate?

A. Yes, sir.

Q. What did you and Mr. Woelde do then?

A. We drove up as far as we could and got out and made our business known, what we wanted.

Q. Was the automobile that was parked you said parallel with the gate parked in the road? Could you get in the gate with the automobile there?

A. I believe we got in the gate without the car being moved, yes, sir.

Q. But the gate was closed?

A. Yes, sir.

Q. Did you see anyone there that you recognized to be L&N employees?

A. Yes, sir.

Q. Name those men that you saw.

A. Reese Thomas was there and this fireman, Jody Johnson. Then there was in a car on the other side of the street a fellow named Hawkins.

Q. What was his job?

A. Fireman, locomotive fireman, and a fellow named Letchman.

Q. What was his job?

A. He is a fireman.

Q. Is he the man sitting over there third from the end on the bench?

A. Yes, sir.

Q. You told us that you made known to the people you saw there what your purpose and business was in being there?

A. Yes, sir.

Q. Now tell the jury the best you recall it in your own words what was said by you about that matter and what was said to you by anyone present.

A. Well, we made it known what we wanted. Mr. Thomas said we wasn't going in. We kept on talking, and directly Mr. Letchman came up and got in the conversation, and he was willing for us to go, and

finally we did go in there. The time element was about 30 minutes to get in there.

Q. What was said, if anything, to you about a time element, or about permission for you to go in your employee's property?

A. Said if we wasn't out in 30 minutes they would come in after us.

Q. Were they still out there when you came back?

A. Yes, sir.

Q. How long were you in there?

A. I think about 25 minutes.

Q. Did you then leave?

A. Yes, sir.

Q. Were they still there when you left?

A. Yes, sir.

Q. How many gates on the east side of the Railroad Company's property there were there in October, of 1955?

A. You mean by the highway, that is the east side of it?

Q. Yes.

A. There is two.

Q. What are those gates?

A. One is 39th Avenue, and the other one down at I believe that is 40th Avenue, or 41st Avenue.

Q. How many entrances did they have in all, regardless of whether there were gates there or not gates?

A. Two on Vanderbilt Road, and one around by the Master Mechanic's Office.

Q. That's the one you just told us about?

A. Yes, sir.

Q. Where you ran into Mr. Thomas and some other fireman. And you had already been, did you say you had already been to another one of those gates to go to work that morning?

A. Yes, sir.

Q. And you said there were some 15 or 18 men there?

A. Yes, sir, that's right.

Q. Did you go to any of the other gates of the Company which you have not mentioned up to now on Monday?

A. No.

Q. Did you visit any of the gates of the Boyles property on Tuesday, October 25?

A. I don't believe so.

Q. Did you go to Morris Avenue, the main office, Superintendent's Office, at any time on Tuesday the 25th?

A. No, sir.

Q. When was the next time you went around the Company's premises or porperty?

A. Just prior to going back to work.

Q. What day of the week was that, if you recall?

A. I think it was Wednesday.

Q. Mr. Mitchell, was Bruce Barnett down at the Master Mechanic's gate that Monday when you had that conversation?

A. Yes, sir.

Q. With Mr. Thomas?

A. Yes, sir.

Q. Was there anyone else that you recall?

A. Those five men I believe is all that was there.

Q. When those three men walked into the Yard Office on Sunday night, with two of them carrying sticks in their hands and said "We're on strike, everybody get out", or words to that effect, I will ask you to tell these twelve gentlemen whether or not you were afraid to stay there under those circumstances?

Mr. Taylor:
We object.

A. Yes, sir, I felt—

The Court:
I sustain the objection as to whether or not he was afraid. I think he can testify whether or not he was scared.

Q. Well, were you scared, Mr. Mitchell?
A. Yes, sir.

Mr. Pettus:
We object.

The Court:
Overruled.

Mr. Pettus:
We move to exclude that answer.

The Court:
All right, the first answer is excluded, gentlemen. The last answer is in.

Q. When you went to the Master Mechanic's gate on Monday and you were told that you and your Assistant, Mr. Woelde, could go in and check waybills, but if you were not out of there in 30 minutes they would come in and get you, were you scared then?

Mr. Taylor:
We object.

The Court:
Overruled.

Mr. Pettus:
Incompetent, irrelevant, and immaterial. It calls for a mental operation. We except.

Q. What is your answer, please, sir?

A. Well, I figured we could get in and out within 30 minutes, I wasn't too afraid on that deal.

Q. Were you scared to stay in there longer than 30 minutes?

Mr. Pettus:
We object to that.

A. Yes, sir.

The Court:
I sustain the objection.

Mr. Gibson:
That's all.

The Court:
Do you have any questions?

Mr. Pettus:
Yes, sir.

The Court:
It is recess time, gentlemen. We are going to have to recess until tomorrow morning at 9:00 o'clock.

Gentlemen, be back tomorrow morning at 9:00 o'clock. Remember the Court's admonition not to talk to anybody. Court is recessed.

(Whereupon, at 4:45 p. m. an adjournment was taken until 9:00 a. m., Tuesday, September 25, 1956.)

Tuesday, September 25, 1956,
at 9:00 A. M.

The Court:
All right gentlemen. Mr. Mitchell, take the stand.

BEN MITCHELL, the witness on the stand at the time of adjournment, having been previously duly sworn, resumed and testified further as follows:

Cross Examination.

Mr. Taylor:
Are you gentlemen through on direct examination?

Mr. Gibson:
Yes, sir.

By Mr. Taylor:
Q. This is Mr. Ben Mitchell who concluded your testimony on direct examination yesterday?
A. Yes, sir.
Q. Now, Mr. Mitchell, where are you now stationed?
A. Evansville, Indiana.
Q. How long have you been with the L&N?
A. Since 1925 or '26, March 25, 1926.
Q. Where did you go to work for the L&N?
A. Here at Birmingham.
Q. When were you transferred to Evansville, sir?
A. Last December.

Q. Now from 1926 until last December did you work all of your time for the L&N at Birmingham?

A. For a few years during the depression I was cut off.

Q. Other than the time you were cut off you worked all your experience with the L&N Railroad right here in Birmingham, is that correct?

A. Yes, sir.

Q. I believe you testified yesterday you started working as a switchman, is that correct?

A. Yes, sir, herder switchman.

Q. And you are now what?

A. Trainmaster.

Q. What are the intervening promotion steps between your starting point and the job you now hold?

A. From switching you go to foreman, and I worked as Assistant Yardmaster, then Assistant General Yardmaster, and Assistant Trainmaster and Trainmaster.

Q. You are now Trainmaster?

A. Yes, sir.

Q. When were you made Trainmaster?

A. It was January 1, 1950.

Q. Now, Mr. Mitchell, let me ask you this, if the success that you have had and the promotions you have received did not depend in large part on your procuring the co-operation of the men who worked under you and with you?

A. Partly, yes, sir.

Q. In other words, is it fair to say your advancement has been due at least in part to the help and co-operation of your fellow workers out there at the L&N?

A. That's right.

Q. Now are you a member of a Brotherhood or Labor Organization of any kind?

A. No, sir.

Q. Have you ever been?

A. I belonged to the Trainmen when I worked as switchman.

Q. When was the last time you belonged to the Trainmen?

A. It must have been about 1940 or '42, something like that.

Q. Did you belong to a Brotherhood while you were Trainmaster?

A. No, sir.

Q. You were not a dues paying member while you were Trainmaster at any time?

A. I don't think so.

Q. Isn't it a fact, Mr. Mitchell, that you belonged to a Brotherhood but did not attend the meetings after you got the position of Trainmaster?

A. It is not a fact.

Q. That is not true?

A. No, sir.

Q. All right, now I believe you testified yesterday that in 1955, in October, of 1955, that you worked from 8:00 in the morning until 5:00 in the afternoon, is that correct?

A. Yes, sir.

Q. Speak up so the Reporter can get your answer down.

A. Yes, sir.

Q. Was that true during the week ending October 23, 1955, or the week in which October 23, 1955 was one of the days?

A. Well, on Saturday afternoon I got off, and then Sunday afternoon I got off when conditions would permit.

Q. What is your normal work time on Saturday?

A. Around 8:00 o'clock in the morning until noon.
Q. Up until noon?
A. Yes.
Q. I believe that you said that there were more than one clerical people in your office, is that correct?
A. Yes, sir.
Q. What is the correct terminology of the place where you worked?
A. It is the Birmingham Boyles Terminal Yard Office.
Q. I mean the office you worked in?
A. General Yard Office.
Q. In the Yard Office?
A. Yes, sir.
Q. And what was your schedule of work on Sunday, October 23?
A. I went to work as usual Sunday morning.
Q. At 8:00 o'clock, is that right, sir?
A. About that, yes, sir.
Q. At what time did you leave?
A. Just a little before lunch.
Q. You left just a little before lunch?
A. I went back that afternoon.
Q. All right, we'll get to that in just a minute. Was that the end of your working day for Sunday, October 23, at noon?
A. It wasn't that day, no, sir. I went back.
Q. It was the week before, was it not?
A Yes, sir.
Q. Who told you to go back?
A. I don't know who the telephone call was received from about the trouble that was anticipated. That is the reason I went back.
Q. What time did you get this call?
A. Oh, it was I reckon around the early part of the afternoon.

Q. About 2:00 o'clock?

A. Something in that line, yes, sir.

Q. About 2:00 o'clock. Did any official of the L&N Railroad Company tell you to go back out there to the Yard Office?

A. No, sir.

Q. Did you tell any official of the L&N Railroad that you were going back to the Yard Office?

A. I don't believe I did, no, sir.

Q. You took your lunch, didn't you?

A. Yes, sir.

Q. You had already put in your day's work at that time out there, is that right?

A. That's right.

Q. Did you take your gun with you?

A. No, sir.

Q. Where did you leave your gun?

A. The gun is at the house, at my home.

Q. You have a permit to carry a pistol, do you not?

A. No, it has run out.

Q. Sir?

A. It has run out.

Q. You had a permit on October 23, 1955 to carry one, didn't you?

A. I don't believe I did, no, sir.

Q. You left the gun at home in any event when you went out there on Sunday, is that right?

A. That is right.

Q. Now, I believe you testified that on Sunday night at about 8:30 there were nine clerks on duty in the Yard Office at the time you were out there, is that correct? I'm speaking about Sunday night, October 23. To refresh your recollection I am speaking about the Sunday night when the work stoppage occurred?

A. Let's see.

Q. Just name those clerks that were on duty there at that time.

A. I don't know whether I can do that or not.

Q. Name all you can.

A. The chief clerk was J. H. Duncan. I believe my record clerk was Donald Mullins, I believe.

Q. What was that name again?

A. Donald Mullins, I believe he was.

Q. Donald Mullins. All right, sir.

A. I don't know who worked the bill desk, I can't say. There were three there. We had an operator and we had a chief caller and a call boy, and we had a Yard Dispatcher, but I don't remember who he was right now. I believe it was A. S. Johnson; and myself.

Q. All right, was John C. Smith there that night?

A. He was the call boy. I don't remember whether he was there or not.

Q. You don't say he was not there, do you?

A. I don't know whether he was or not.

Q. How about J. W. Scott?

A. I believe Scott was the call boy.

Q. You think that Scott was there as the call boy?

A. Yes.

Q. Now getting back just a moment, I believe you said that you left your office in the Yard Office at Boyles when you completed your normal day's work that Sunday about 12:00 o'clock, is that correct?

A. Around noon, yes, sir.

Q. Where did you go then?

A. Home.

Q. Did you go anywhere else?

A. I don't think so.

Q. Did you call anybody after you got home?

A. I don't think so.

Q. Did anybody call you?

A. I had this call along about 2:00 o'clock.

Q. I am talking of before you got that call did anybody call you?

A. No, sir, I don't think so.

Q. Did you talk to anybody with the L&N Railroad in person or over the telephone with the exception of this call that I will get to a little bit later?

A. I can't say that I did.

Q. Well, can you say that you did not?

A. I just don't know.

Q. You just don't know about that?

A. No.

Q. All right. Did you stay at home all Sunday afternoon?

A. Until I went back to the Yard Office.

Q. Until you went back to the Yard Office?

A. Yes.

Q. Was there anybody there with you?

A. My wife was there.

Q. Anybody else besides your wife and you?

A. I don't think so.

Q. Did anybody come in, come to see you?

A. I don't think they did, no, sir.

Q. All right, now you have testified—well, before we get to that, what time did you arrive at the Yard Office when you went back that afternoon?

A. Well, it was around 3:30 I guess.

Q. Around 3:30 in the afternoon?

A. Yes.

Q. Now did you call any official of the L&N Railroad then?

A. Yes, sir.

Q. Who did you call?

A. I think I called Mr. Kirchner. I told him what I had heard.

Q. What did you tell Mr. Kirchner?

A. That I had heard that they was going to have a strike and shut the plant down, I mean shut our Railroad down.

Q. Did you tell him what time this was supposed to happen?

A. Yes, I believe it was 6:00 o'clock when it was supposed to come off.

Q. Is that what you told him?

A. Yes, sir.

Q. What did he tell you?

A. To advise him later on.

Q. Is that all he told you?

A. I think so.

Q. Did he give you any later advice?

A. Well when—not until they walked out. Then I called him back again and tole him that they had walked out.

Q. When did you call him back again?

A. After I got home.

Q. After you got home. What time was that?

A. Around 9:30.

Q. Well, isn't it a fact, Mr. Mitchell, that Mr. Kirchner told you, "Well, if anything happens to close up the place and go home"?

A. No, sir.

Q. He didn't tell you anything like that?

A. No, sir.

Q. Well, did he tell you to leave somebody there to answer the telephone?

A. Who was there to leave, when everybody walked out?

Q. Did he tell you to get somebody there to watch the premises, to see that nothing happened to them?

Sir? Did he tell you that?

A. I don't think so.

Q. Did he tell you to post a guard around the premises inside of the L&N property?

A. No, sir.

Q. He didn't tell you that?

A. No, sir.

Q. Did he tell you to lock any gates?

A. No, sir.

Q. He didn't tell you to lock any gates?

A. No, sir.

Q. Did he tell you to close any gates?

A. No, sir.

Q. He didn't tell you that?

A. No, sir.

Q. He just said he would call you later, is that right?

A. I told him I would call him later, which I did.

Q. And he didn't give you any instructions about what to do in the event of a walkout?

A. No, sir.

Q. Now, who is your immediate superior, Mr. Kirchner?

A. Mr. Parsons, Assistant Superintendent first, and then Mr. Kirchner.

Q. Mr. Parsons was your immediate superior, is that correct?

A. Yes, sir.

Q. Now, he is under Mr. Kirchner, I believe you stated, as Assistant Superintendent?

A. Yes, sir.

Q. Did you talk to Mr. Parsons that Sunday afternoon?

A. Not Sunday afternoon. I did Sunday night.

Q. What time did you talk to him Sunday night?

A. After I talked to Mr. Kirchner, shortly after 9:30.

Q. What did you tell Mr. Parsons?

A. About the same thing I told Mr. Kirchner.

Q. What did Mr. Parsons tell you?

A. Well, I don't remember. Let's see, I told him what had happened, and I believe he told me to just stay home and see what they do tomorrow, I believe that's the way it was.

Q. All right, now Mr. Mr. Mitchell, is this conversation that you tell this jury you had with Mr. Parsons that Sunday night, is that the first time you discussed this work stoppage with Mr. Parsons?

A. I am pretty sure it was, because I tried to call him prior to that, but couldn't. I think Mr. Kirchner is the only man I told about it.

Q. Well, you say you are pretty sure that it is?

A. Yes, sir.

Q. I take it by that you are not positive that it is, and that you could have talked to him earlier, is that right?

A. I don't believe I did.

Q. You could have talked to him Saturday before the Sunday walkout, couldn't you?

A. I did talk to him Saturday, yes, sir.

Q. Did you talk to him about the walkout?

A. No, I didn't know it.

Q. You didn't mention it?

A. No, sir.

Q. You didn't mention the possibility of it, is that right?

A. No, sir.

Q. All right, now, I believe you testified on yesterday that three men came into your office?

A. That's right.

Q. While you were there?
A. That's right.
Q. What time was this?
A. About 8:45 I imagine, 8:30 or 45, something like that.
Q. About 8:45?
A. Yes, sir.
Q. You had been there at the office for some five hours forty-five minutes, or five hours before they came in, is that right?
A. Yes, sir.
Q. Now these clerks that you mentioned, D. E. Mullins and the rest of them, the, were there at that time, were they not?
A. Yes, sir, they work from 3:00 to 11:00.
Q. All right, now, I would like to make sure that you have this time right, so if there is any doubt about it in your mind I wish you would tell us?
A. All right.
Q. You said 8:45. Is that correct?
A. Between 8:30 and 8:45.
Q. Between 8:30 and 8:45?
A. Yes, sir.
Q. And you have had time to think about that time, and so far as your best judgment is concerned that is the time, is that correct?
A. Yes, sir.
Q. Now, when did you first see the three men that you say came in there at that time, Mr. Mitchell?
A. They were inside of the building when I first saw them. I didn't see them come in the door.
Q. Now—
A. Because I was using the telephone.
Q. Now, I believe you told us yesterday afternoon, I believe, that, or told your lawyer that he asked you

the question, that these three men were dressed in street clothes, that's right, isn't it?

A. I think so, yes, sir.

Q. And who were the three men that you claim you saw in there that night?

A. Fireman Baum and Fireman Davis and Fireman Myrick.

Q. Now, what are the initials of this gentleman named Myrick?

A. I don't know.

Q. Well, how many Myricks have you got working for the L&N a the Boyles Shop?

A. Well, we have an engineer, and he has a son that is a clerk. And this Myrick I don't think is even kin to those two. We have three.

Q. Well, you have three Myricks out there?

A. Yes, sir.

Q. Which one of these Myricks was it?

A. It was Fireman Myrick.

Q. You don't know his initials?

A. No, sir.

Q. How long has he been working for the L&N?

A. I don't know that.

Q. Now, do you know what job Myrick was working?

A. No, sir.

Q. Do you know what job Davis was working?

A. No, sir.

Q. Now, you testified I believe that Mr. Mullins, D. E. Mullins was in there when these three men came in, is that right?

A. I think he was the record clerk.

Q. The record clerk?

A. Yes, sir.

Q. So far as you know Mr. John C. Smith was there also?

A. No, I think Scott was the call boy that night.

Q. You think Scott was?

A. Yes, sir.

Q. J. W. Scott?

A. Yes, sir.

Q. That is J. W. Scott?

A. I believe it is, yes, sir.

Q. Now, where were you standing in relation to, or sitting if that be the case, with relation to Mr. Scott and Mr. Mullins?

A. Mr. Scott and who?

Q. Mr. Mullins, D. E. Mullins.

A. Well, like that is the door to the entrance to the office (indicating).

Q. Are you referring to this window behind the jury box?

A. Yes, sir, that would be the door. Then your desk where the chief clerk is I imagine is about 25 feet from the door.

Q. Who was seated there?

A. Sir?

Q. Who was seated there.

A. Mr. Duncan was on the side facing the door and I was on the side standing with my back to the wall,—to the door.

Q. Were you right by the desk?

A. Yes, sir.

Q. Where was Mr. Mullins seated or standing?

A. Just inside of the door there is a long table over here (indicating), and that's where the record clerk works.

Q. In relation to the counsel table here, that long table would be where the jury box is?

A. About that, yes, sir.

Q. Now, you say the three men came in the door represented by the window behind the jury, is that correct?

A. No, sir, they was in the building when I saw them.

Q. Where were they when you saw them?

A. They were standing on this side, and Davis, two of them were standing on this side, and Davis on the far side of the opening of the door.

Q. All right, and who did the talking?

A. Mr. Baum.

Q. How close was he standing to where Mr. Mullins was seated when he made this remark you claim he made?

A. Oh, I imagine within 10 feet.

Q. Within 10 feet?

A. Something like that, or 15.

Q. How far was he away from you?

A. About 20 or 25.

Q. About 20 feet from you and about 10 feet from Mr. Mullins, is that right?

A. I judge that Mr. Mullins was the record clerk.

Q. I understand. I am not making a point of that.

A. All right.

Q. Now, was that room lighted?

A. Yes, sir.

Q. Was there anything going on in there except normal business activities?

A. No, just regular work.

Q. Is there any reason that you know of why Mr. Mullins could not have heard everything that you heard?

A. No. He could have.

Q. And he could see everything that you could see, is that correct?

A. I imagine so.

Q. And all of the other yard clerks in there could see and hear everything that you heard and saw so far as you know, couldn't they?

A. Well now, them three that worked the bill desk, that was a little further back.

Q. All right, with the exception of anybody who had their back turned to these fellows, everybody else in the room was in a position to see and hear the same things that you say you saw and heard?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. There were no partitions separating that room, was there, Mr. Mitchell?

A. Oh, yes, yes, sir.

Q. All right, where are the partitions?

A. Well, the room that the operator works in, there is a partition, and then there is a partition in there where the chief caller and caller works. And there is another little room where the Yard Dispatcher works.

Q. All right now we have located the door, the table where Mr. Mullins was seated, the table where the chief clerk was seated, and you say you were alongside of that table, is that correct?

A. Standing up there.

Q. Now, there is no partition between that table where you and the chief clerk were, and the table where Mr. Mullins was seated, and the door where these men came in, is there?

A. No, sir.

Q. Now, just what time did these three men come in?

A. Well, around 8:30.

Q. You know as a matter of fact, don't you, Mr. Mitchell, that Myrick was working on Job 20 that night?

A. No, sir, I didn't know where he was working.

Q. Are you familiar with Job 20?

A. Yes, sir. That is South Train, a South Train Yard Job.

Q. South Train Yard Job?

A. Yes, sir.

Q. How far is the South Train Yard located from your office in the Yards?

A. Well, it is I would say about three city blocks.

Q. About three city blocks?

A. Yes, sir.

Q. What time did Job 20 go to work?

A. I believe that is the job that went to work at 2:45.

Q. What time did it get off?

A. 10:45.

Q. 10:45 p. m.?

A. Yes, sir.

Q. You know, don't you, that Davis was working the hostler's job at the roundhouse that Sunday night, do you not?

A. I don't know where he was working, no, sir.

Q. You didn't know where he was working?

A. No, sir.

Q. How far is the job at the roundhouse located from the Yard Office? About a half a mile, isn't it?

A. Every bit of it, yes, sir.

Q. Every bit of it?

A. Yes, sir.

Q. That job goes to work at 3:00 o'clock, doesn't it, in the afternoon?

A. I think it does, yes, sir.

Q. And gets off at what time?

A. 3:00 to 11:00.

Q. 11:00 o'clock p. m.?

A. If he was working the hostler's job, that's the time.

Q. If he was working the hostler's job, that is what time he got off?

A. Yes, sir.

Q. Now then, if Myrick was working Job 20 and he worked up until it concluded, he couldn't have been in the Yard Office where you say he was, could he?

A. He didn't work until he completed the shift.

Q. Well, I am asking you if he did?

A. Yes, sir.

Q. Will you please answer the question?

A. Oh, yes.

Q. And if Davis worked his hostler's job until it concluded at 11:00 p. m. he could not be in the Yard Office either, could he?

A. No.

Q. Are you positive about the identification that you have made of these three men?

A. I think so.

Q. You think so?

A. I am sure I did, yes, sir.

Q. You are absolutely certain?

A. Yes, sir.

Q. Now, if you are mistaken as to the identity of one of them, you could be mistaken as to the identity of all of them, couldn't you?

A. Yes, but I remember them.

Q. Sir?

A. I remember them.

Q. Well, if you say Myrick was there and you found out he was not there, you are mistaken, were you not?

A. I imagine.
Q. Sir?
A. Yes, sir.
Q. If you are mistaken about one you could be mistaken about all three of them, couldn't you?

Mr. Simpson:
May it please the Court, we don't like to—

The Court:
I sustain the objection to that.

Mr. Simpson:
That is pure argument.

Q. Now, Mr. Mitchell, you are known out there at the L&N, and have been for a good many years to be a very heavy drinker of alcoholic beverage, are you not?
A. No, sir.
Q. Did you have anything to drink on this Sunday afternoon?
A. No, sir.
Q. Not a drop?
A. No, sir.
Q. You didn't drink anything at home after you got off from work?
A. No, sir.
Q. You didn't have anything to drink after you came back out to the Yard?
A. No, sir.
Q. Is that correct?
A. That's right.
Q. Now, Mr. Mitchell, you didn't see anybody in that Yard Office with sticks in their hands Sunday night, did you?

A. Yes, sir.

Q. And are you telling this jury that H. M. Baum was one of those men?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Why, you know he was not in there, don't you, Mr. Mitchell?

A. No, sir.

Q. Now, Mr. Mitchell, it has already been established that, by questions, that you are Trainmaster I believe. Is that the proper terminology?

A. Yes, sir.

Q. In Louisville, Kentucky?

A. Evansville, Indiana.

Q. Evansville, Indiana, excuse me?

A. Yes, sir.

Q. Now, you don't establish seniority in that type of position with the Railroad, do you?

A. No, sir.

Q. And you have no contract of employment, either individually or through an organization with the L&N Railroad, do you?

A. No.

Q. Is your answer "No"?

A. No, sir, I don't have any contract.

Q. Isn't it true that the Railroad could terminate your services any time they saw fit, Mr. Mitchell?

A. Yes.

Q. Now, you are most anxious, are you not, Mr. Mitchell, to come down here from Evansville and give to this Court and jury the type of testimony that the L&N Railroad expects you to give, aren't you?

A. Repeat that, please, sir.

Q. I say you are mighty anxious to come down here and tell this Court and jury, and give this Court and jury the type of testimony that the L&N Railroad expects you to give, are you not?

A. No, sir.

Q. You are not anxious to do that?

A. No, sir.

Q. Are you being paid to testify in this case?

A. I get my salary, if that's what you mean.

Q. Your expenses down here are being paid, are they not?

A. No, I am staying at home.

Q. Sir?

A. I am staying at my son's home.

Q. You are not incurring any other expense that you would not otherwise incur by coming down here then, are you?

A. No, sir.

Q. You are not losing any time from your work on account of it, are you?

A. No, sir.

Q. You are being paid just like you were there performing duties?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Now, I believe you stated that after the three men left the Yard Office you told the clerks "Wait until I get my lunch, and I'll go with you", is that correct?

A. I told Mr. Duncan that. The rest of them were gone.

Q. The rest of them had already gone?

A. Yes, sir.

Q. What time did you leave the Yard Office?

A. About 8:45.

Q. Was that immediately after these men came in?

A. I imagine about four or five minutes after they came in, maybe three.

Q. About four or five minutes?

A. Yes, sir.

Q. Did I understand you to say a moment ago—I am trying to get it straight in my mind—that you called Mr. Kirchner before you left the Yard Office?

A. No, sir, I waited until I got home.

Q. Was there anybody in the Yard Office when you left?

A. No, sir, I was the last one out.

Q. You were the last one out?

A. Yes, sir.

Q. Now, there wasn't any occasion for you to call Mr. Kirchner, was there, because he already knew there was going to be a walkout, didn't he?

A. I couldn't answer that. I don't know whether he knew it or not.

Q. Were you the senior L&N official at the Boyles Yard that Sunday night?

A. Yes, sir.

Q. You were the man in charge, so to speak?

A. Yes, sir.

Q. You were the man that anybody out there would look to for instructions, so far as the L&N Railroad is concerned?

A. Yes, sir.

Q. You are telling this jury that you, the senior official on duty, saw a walkout coming, saw the men leaving, and you got up, picked up your lunch pail, put on your hat and walked out, without taking any steps to safeguard the Company's property, or call your superior, and tell him what was going on, or anything else? Is that what you tell this jury?

A. That's what happened. But the reason I did walk out was because I was told to "Get out."

Q. You took no steps to notify the high officials what was happening?

A. Not until I got home.

Q. Did you have a standard operative procedure at this time about what to do in case of a walkout?

A. No.

Q. Hadn't Mr. Kirchner or Mr. Parsons ever told you what to do in case there was a walkout without advance notice?

A. No, sir.

Q. They never have told you that?

A. No, sir.

Q. You didn't take it upon yourself to call them and advise them before you left the premises, is that correct?

A. I didn't have time to.

Q. You didn't take time to, is that correct?

A. Well, that may be it.

Q. Mr. Mitchell, did you turn out the lights in the Yard Office?

A. No, sir.

Q. Did you leave them burning?

A. No, sir.

Q. Who turned them out, if you know?

A. I couldn't answer that. They were turned out while I went upstairs to get my lunch. I wasn't in there when they turned them out.

Q. Did all of the lights in the whole Yard go off at the same time?

A. Well, all of the lights in the Yard Office went off at the same time.

Q. Were there any other lights on then?

A. Yes, the arc lights out in the Yard were on at that time I am sure.

Q. Did they stay on?

A. No, they went out before we got to the powerhouse, or about the time we got to the powerhouse.

Q. Where is the light switch that controls the lights in the Yard Office?

A. Right behind the chief clerk's desk.

Q. Are there any other switches you know anything about?

A. No, there is just the one master switch there.

Q. Who was there in the room when you went upstairs to get your lunch?

A. Upstairs, in that room?

Q. Who was in the room where the light switch was when you went up to get your lunch?

A. I think everybody had gone or was in the midst of leaving except Mr. Duncan—

Q. Except Mr. Duncan?

A. No, no, there was two or three more walking around.

Q. When did you say the lights went out?

A. Sir?

Q. When did you say the lights went out?

A. When I went upstairs after my lunch.

Q. You had to come back downstairs?

A. Yes, sir.

Q. In the dark, is that right?

A. That's right. Well, I had a flashlight.

Q. Now, Mr. Mitchell, you testified on your direct examination that the first thing you knew about a work stoppage was a telephone call that you received on Sunday, I believe, is that correct?

A. That's right.

Q. Now, I believe you told me a few minutes ago, and correct me if I am wrong, that you received this telephone call about 2:00 p. m.?

A. In the neighborhood of that, yes, s.

Q. Did you receive it after you finished your normal morning's work at the Yard Office?

A. I left the Yard Office around noon.

Q. All right, sir. You received the telephone call at home, is that right?

A. That's right.

Q. Did you?

A. That's right.

Q. Now, will you please tell the gentlemen of the jury again, please, as well as you can exactly what mysterious caller told you over the telephone?

A. Well, he just said that they were going to have a meeting, the firemen were going to have a meeting and set the hour of the walkout. He never did identify himself, he just hung up. I don't know who it was. He never did identify himself. I never did find out who it was.

Q. Is that all he told you?

A. About that, yes, sir.

Q. Well now, you told us yesterday that this mysterious caller told you what time there was going to be a walkout, didn't you?

A. He said about 4:00 o'clock, or 6:00, they were going to have this meeting.

Q. He said they were going to have a meeting at 4:00 o'clock?

A. No, said they were going to have a meeting, going to plan a walk out at 4:00 o'clock, meeting at 4:00—ro, they were going to have a meeting at 4:00 o'clock, and going to walk out at 6:00.

Q. Didn't you testify here yesterday, Mr. Mitchell, that this caller told you there was going to be strike at 4:00 o'clock?

A. I believe I did. That's the reason I went back earlier.

Q. Mr. Mitchell, is your testimony now, I want to get it straight here, that this mysterious caller told you that there would be a strike at 4:00 o'clock?

A. Yes, sir.

Q. And that's the reason you went back there at 3:30, is that right?

A. Yes, that's right.

Q. And the caller didn't tell you anything about any meeting?

A. He also said they was going to have one, or had one.

Q. He said that they were going to have one or had had one, is that right?

A. Let me think a minute. The best I can remember he said there was going to be a meeting, or had been one.

Q. You are pretty confused about this telephone call, Mr. Mitchell. Did you ever get such a telephone call?

A. Yes, sir.

Q. Who was the first person you told about this call?

A. I don't remember that.

Q. You don't remember that?

A. No.

Q. You don't?

A. I believe Mr. Kirchner is the first one I told about it.

Q. You believe Mr. Kirchner is the first one you told about it?

A. Yes, sir.

Q. What did you tell him about it?

A. Just what I heard.

Q. When did you tell him?

A. Shortly right after I received the call.

Q. What do you mean by "shortly"?
A. A few minutes.
Q. Where did you find Mr. Kirchner?
A. At home, at his home.
Q. At his home?
A. Yes.
Q. And did he give you any instructions then?
A. He just told me to advise him.
Q. He told you to advise him?
A. Yes.
Q. Did he tell you to go back to the Yard Office?
A. No, sir, I told him I was going.
Q. You told him you were going back?
A. Yes, sir.
Q. Now you are so confused about what this man told you over the telephone, Mr. Mitchell, is there any doubt about what date he called you?
A. No. He called me the day that they actually came out?
Q. He called you the day they actually came out?
A. Yes, sir.
Q. Are you positive that it could not have been Saturday or Friday before that?
A. No.
Q. Are you certain it could not have been?
A. It was Sunday.
Q. You say it could not have been?
A. It was Sunday.
Q. You say it was, or you don't think it was?
A. It was Sunday.
Q. You think it was Sunday?
A. Yes, sir.
Q. Did you recognize the voice of the man who called you?
A. No, sir.

Q. Had you ever heard it before?
A. I might have, I don't know.
Q. Have you ever heard it since?
A. I couldn't say because I don't know who it was.
Q. I am asking you if you recognized the voice?
A. No.
Q. Not if you know who it was?
A. No.
Q. As having heard it before?
A. I can't say that I did.
Q. Now, Mr. Mitchell, I believe you told me that the mysterious caller didn't say anything about a meeting to be held? Or you don't remember what he said about that, is that correct?
A. No, sir, I can't say that I remember exactly. He either said there was going to be or there had been one.
Q. You say he said he said there was going to be or there had been a meeting?
A. Or was going to be, yes, sir.
Q. All right now let's get back just a moment. I believe you stated you left the Yard Office at 8:45?
A. That's right.
Q. Sunday night?
A. About that, yes, sir.
Q. Who were you with?
A. I was walking parallel with James Duncan, J. H. Duncan.
Q. Walking parallel with J. H. Duncan?
A. Yes, sir.
Q. I believe you told us he was chief clerk?
A. Yes, sir.
Q. Where was Mr. Mullins?
A Everybody else was ahead of us. We were the last two out.

Q. I am asking you where they were, if you know?

A. I don't know where he was.

Q. If you don't know, just say so.

A. All right.

Q. Where were these three men that you claim you saw in the Yard Office?

A. Just a few feet ahead of us.

Q. How many feet?

A. Oh, just two or three. We was all walking along in a group.

Q. Can you tell the jury how Mr. Myrick was dressed?

A. No, sir.

Q. Can you tell the jury how Mr. Davis was dressed?

A. Just regular street clothes. I don't know what color they were.

Q. You say all three of them were in regular street clothes?

A. Yes, sir.

Q. Well, you don't know whether they had on a coat and tie, do you?

A. No, sir.

Q. You don't know whether they had on a sport shirt or not, do you?

A. No, sir.

Q. You don't know whether they were wearing a hat or not, do you?

A. I'm pretty sure everybody had a hat on.

Q. You are pretty sure everybody had a hat on?

A. Yes, sir.

Q. It wasn't a cap, it was a hat? All right, how long do you think it took you to get out of the Yard Office, I mean out of the gate, off the premises?

A. Probably 10 minutes.

Q. Probably 10 minutes?

A. About.

Q. The group that you have just described all walked out together?

A. Yes, sir.

Q. What did you do when you got to the gate?

A. Proceeded right on home.

Q. Was your car parked down there?

A. No, I walked down.

Q. You walked down there?

A. Yes, sir.

Q. You live very close to the Boyles Yard?

A. About four blocks.

Q. About four blocks?

A. Yes, sir.

Q. Did you make any stops on the way?

A. No, sir.

Q. You didn't go by Rex's Barbecue?

A. No, sir.

Q. Who did you see around the gate when you came out?

A. I don't know that, who was there in that crowd that went out with us. There was several out there, I am pretty sure.

Q. About how many?

A. Oh, 8 or 10 I would say.

Q. All right. What time did you get home that night?

A. About 9:15 or 20.

Q. Was there anybody there except your wife?

A. No, sir.

Q. Did you have any company that evening?

A. No, sir.

Q. Now then, I believe you told us that you made some telephone calls after you got home?

A. That's right.

Q. Who was the first man you called?
A. Mr. Kirchner.
Q. What did you tell him?
A. I told him I was home, and the reason I was home.
Q. What did he say?
A. I don't remember.
Q. Do you know what he said?
A. Sir?
Q. Do you know what he said.
A. No, sir, I don't know. I'm just trying to think. I don't know what he said to me now.
Q. Did you call Mr. Parsons?
A. Yes, sir, I called Mr. Parsons.
Q. What did you tell him?
A. I told him about the same thing, and he said "I'll see you in the morning."
Q. Was he surprised?
A. Apparently he was, yes, sir.
Q. He didn't give you any instructions though, did he?
A. Not that night, no, sir.
Q. Did you have anything to drink that night at home?
A. No, sir.
Q. What time did you get up on Monday morning?
A. About 6:00 o'clock I imagine.
Q. And I assume you went through the normal routine, had your breakfast at home?
A. That's right.
Q. What time did you leave home?
A. Around 7:30 I would say.
Q. Walking or riding?
A. Walking.
Q. Where did you go?

A. Tried to—I mean I went down the pike to look the situation over.

Q. I didn't hear what you said.

A. I went down to the gate, to the entrance to the Yard.

Q. What gate did you go to?

A. That one on Vanderbilt Road, off of 39th Street I believe it is.

Q. Let's draw a diagram here. I can't even draw a straight line, but if you will assume that this is Vanderbilt Avenue, and this is Rex's Barbecue, the Boyles Shops are located in this area over here, are they not?

A. Yes, sir, the roundhouse is there.

Q. Will you indicate to me, please, sir, so I will get it exactly right, the relative locations of all the gates and entrances in the Boyles Yard? Would you mind taking a piece of chalk and indicating that?

A. Well, you have got this—

Q. Well, you put Rex's where it belongs. I might have put it in the wrong place.

A. Well, there's a gate down here (indicating).

Q. It faces this way, doesn't it?

A. No, sir.

Q. Oh, I am sorry, you are right.

A. Away up towards town.

Q. Excuse me. I want to get this identified.

A. All right.

Q. Which gate is this?

A. The roundhouse gate. Its not a gate, it has just a bridge there.

Q. Will you tell us the next entrance, please, sir?

A. Well, the Master Mechanic's Office would be along here (indicating).

Q. Along about here?

A. Yes, sir.
Q. All right.
A. That is about a block off of the highway now.
Q. Well, let's change that then.
A. All right.
Q. Is there a road leading in something like this (indicating)?
A. Yes, sir.
Q. And the Master Mechanic's gate is about there?
A. Yes, sir.
Q. Are there any others?
A. Well, there is one here at the powerhouse.
Q. At the powerhouse?
A. 39th Street.
Q. Is that right on Vanderbilt Road?
A. That is right on the road.
Q. That is the powerhouse gate?
A. Yes, sir.
Q. All right, sir. You may resume your seat.
A. All right.
Q. Now, excuse me if this is repetition.
A. I beg your pardon?
Q. Will you tell me again so I can recall it to my mind where you went when you left home the first thing Monday morning?
A. When I left home Monday morning?
Q. Yes, sir.
A. I came down to 39th Street, the powerhouse gate there.
Q. You came to the powerhouse gate, is that correct?
A. Yes, sir.
Q. Were you walking?
A. Yes, sir.
Q. Who did you see at the powerhouse gate?

A. I don't—I can't call them. There was about 18 or 20 of them down there I guess.

Q. Can you tell us the names of any you saw?

A. Yes, Reese Thomas was there.

Q. You saw Reese Thomas at the powerhouse?

A. Yes, sir.

Q. What time was this?

A. About 8:00 o'clock.

Q. About 8:00 o'clock?

A. Yes, sir, a quarter to 8:00 I guess, 7:45 or 8:00 o'clock.

Q. Excuse me. You say 7:45 or 8:00?

A. About that.

Q. All right.

A. I was in the Birmingham Office at 8:30, I remember that.

Q. We will get to that in just a minute. Your judgment is that it was between 7:45 and 8:00?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. How long did you stay there at the powerhouse gate?

A. About a minute or two.

Q. Just a minute or two?

A. And caught the bus coming by, caught the bus and went to town.

Q. Did you see anybody there but Reese Thomas?

A. Yes, there was several of them down there, 18 or 20, but I don't remember who was there other than Reese.

Q. You don't remember a single name, but Reese Thomas being there?

A. He's the one I had the conversation with.

Q. How long have you been working with those people out there at Boyles?

A. I have known Mr. Thomas I reckon 25 years.

Q. Did you recognize any of the other men as to which craft they belonged to?

A. No, I don't remember the rest of them, who was out there. There was some switchmen and some firemen, and different ones.

Q. Well, you have been working with those firemen and switchmen out there for over 20 years, haven't you?

A. Yes, sir.

Q. And you tell us that you can't name but one single man, except a man named Reese Thomas out there?

A. That's the only one I remember.

Q. That's the only one that the L&N wanted you to remember, isn't that right?

The Court:

I sustain the objection.

Mr. Simpson:

We don't object, Your Honor, but I think it is most improper.

The Court:

I sustain the objection to that question.

Mr. Taylor:

All right.

Q. Now, how long did you stay there Mr. Mitchell?

A. Just a minute or two, and caught the bus.

Q. Just a minute or two?

A. Yes.

Q. Is it your recollection that it couldn't have been over two minutes?

A. I imagine that, maybe three.

Q. All right, I believe you said you then caught a bus, is that correct?

A. Yes, sir.

Q. So that would have been that you caught that bus between 8:45 and 8:50, would it not, or something like that?

A. Something on that line, yes, sir.

Q. Not later than 10 minutes to 8:00?

A. About that.

Q. Where did you ride that bus to?

A. First Avenue and 20th Street.

Q. Was that a trolley bus?

A. Yes, sir.

Q. Of course, you saw no railroad employees on the trolley bus?

A. I don't think so.

Q. What time did you arrive at First Avenue and 19th Street?

A. About 8:20.

Q. 8:20?

A. Or 25.

Q. All right now, where did you go when you got off the bus?

A. I went, or I tried to go to the Superintendent's Office on Morris Avenue.

Q. Well, you walked down there, didn't you?

A. Yes, sir.

Q. Nobody stopped you?

A. No.

Q. Well, you walked down there then?

A. That's right.

Q. And you say this was at 8:20?
A. I got to the office about 8:20.
Q. Got to the office about 8:20?
A. Yes.
Q. Now, Mr. Mitchell, who is the first person you told about seeing Reese Thomas at the powerhouse at 7:45 on Monday morning, October 24?
A. I don't know. I can't say who I told, I don't remember.
Q. Did you tell anybody within one day after you saw him?
A. Oh, yes, I outlined the activities of the day to Mr. Kirchner that day.
Q. Well, you made an affidavit about what you saw that morning, didn't you?
A. Yes, sir.
Q. Well, you didn't say anything in that affidavit about seeing Reese Thomas at the powerhouse gate, did you?
A. I think so.
Q. If it is not in your affidavit you didn't tell him that, did you?
A. I think it is in there.
Q. All right, we will look at it in just a minute and see.
A. All right.
Q. Who did you see when you got to the Superintendent's Office?
A. Reese Thomas was there at the steps, and somebody on the other side; I don't know who he was.
Q. Are you telling this jury that you left Reese Thomas at the powerhouse gate and got on the trolley bus that was then coming down the road, rode straight to the Superintendent's Office, and that when you got there Reese Thomas was there waiting for you?

A. Yes, sir.
Q. How was he dressed?
A. He just had on regular street clothes.
Q. Did he have on a coat?
A. I don't think so.
Q. Did he have on a jacket?
A. I don't think so.
Q Did he have on a shirt?
A. Yes, sir.
Q. What color was it?
A. I couldn't tell you.
Q. A blue shirt, wasn't it?
A. I don't know.
Q. He didn't have on a jacket, did he?
A. I don't think he did.
Q. You don't think he had on a jacket?
A. No, sir.
Q. Do you know Charlie Schilleci?
A. Yes, sir.
Q. Was he down there at the Superintendent's Office?
A. He was across the street on Morris Avenue.
Q. You never saw him anywhere except across the street?
A. That's right.
Q. Do you know Joe Saab?
A. Yes.
Q. Was he down there?
A. I couldn't say, I don't remember.
Q. You didn't see him? You don't know, or do you say he was not there?
A. I don't know.
Q. How big a man is Joe Saab?
A. About my size.
Q. About your build around the middle?

A. Yes.

Q. How big a man is Charlie Schilleci?

A. He is a good bit smaller than I am.

Q. He is smaller?

A. Yes, sir.

Q. How tall are you?

A. 5 feet 11.

Q. Who did you see running around the Superintendent's door besides you say you saw Reese Thomas?

A. Somebody on the other side of the door, but I don't remember who it was.

Q. You don't remember who it was?

A. No, sir.

Q. Was he a railroad employee?

A. I don't remember who he was.

Q. You don't know whether he was a railroad employee or not?

A. No. sir.

Q. Dd you see Mr. Camp down there?

A. Who?

Q. Mr. Camp.

A. I don't believe I saw him that morning, no.

Q. Where is his office located?

A. Second door down from the entrance to the building.

Q. Right on the street level, isn't it?

A. Yes, sir.

Q. You tell us now then that when you got down to the Superintendent's Office 8:30 a. m., Monday morning, the only man you saw that you could recognize was Reese Thomas, is that right?

A. Schilleci across the street.

Q. And Schilleci across the street?

A. That's right.

Q. What did you see Schilleci doing?

A. Standing over there on that side.

Q. Did you see him walk about, talking to anybody?

A. I can't say whether I did or not.

Q. How long did you stay at the Superintendent's Office?

A. Oh, about a minute or two.

Q. Just a minute or two?

A. Yes.

Q. Where did you go then?

A. I went back up to the drug store.

Q. Where was that?

A. Lane's, there on First and 20th.

Q. Did you get some refreshments in there?

A. No, sir.

Q. What did you do there?

A. I called Mr. Kirchner over the telephone.

Q. How long did you stay there in the drug store?

A. Just a few minutes; I don't know.

Q. Just a few minutes?

A. Yes.

Q. Well, where did you go when you left there?

A. I went on home.

Q. Went to your home?

A. Yes, sir.

Q. How did you get there, by the trolley bus?

A. Yes, sir.

Q. What is your judgment as to the time you arrived home?

A. I imagine about 9:30.

Q. Mr. Mitchell, before I get away from this line of questioning, you know, do you not, that you did not see Reese Thomas at any powerhouse gate at 7:45 Monday morning?

A. I saw him.

Q. You know he couldn't have beat you down there to the Passenger Station and been waiting for you in front of the Superintendent's Office, don't you?

A. No, sir, I don't know that.

Q. How far is it from the Boyles Yard to the Passenger Station down here on Morris Avenue?

A. About 4-½ miles.

Q. Sir?

A. About 4-½ miles.

Q. About 4-½ miles?

A. Yes, sir.

Q. You have to come right through town, don't you, to get there?

A. Yes.

Q. After you have thought about it, don't you know you didn't see Reese Thomas that morning until you saw him at the Superintendent's Office?

A. No, I saw him.

Q. He is the only one you can tell us you saw at the powerhouse gate now?

A. The only man I remember, yes, sir.

Q. The only man you remember?

A. Yes, sir.

Q. You say you never saw Mr. Schilleci over by the Superintendent's door while you were down there?

A. I don't think so, no, sir.

Q. If Mr Camp says he was there, Mr. Camp would be telling the truth, wouldn't he?

The Court:

I sustain the objection.

Q. How long have you known Charlie Schilleci?

A. Oh, 8 or 9 or 10 years, something like that. He has been firing.

Q. Have you worked with him?

A. Sir?

Q. Have you worked with him during that period of time?

A. I have as Assistant Yardmaster. I have not switched any cars with him, as him being a fireman, I don't think.

Q. Now, I want to ask you this question, Mr. Mitchell, if it is not a fact that shortly after this walkout occurred, if you didn't call Charlie Schilleci and tell him that if he would come to your office that you would tell him how to get out of this trouble?

A. Did I call him and tell him that?

Q. Yes, sir.

A. No, sir.

Q. Did you have a conversation with him then in which you told him that or that in substance?

A. No, sir.

Q. Did you ever talk to Charlie Schilleci about this situation?

A. No, sir.

Q. Charlie Schilleci is not a Defendant in this lawsuit, is he?

A. I couldn't tell you, I don't know.

Q. Now yesterday when the lawyer was asking you questions didn't you tell him that the first time, that you first saw Reese Thomas at the Master Mechanic's gate on Monday morning?

A. No, it was the powerhouse gate. Now later on he was at the Master Mechanic's gate.

Q. Yes, I realize that, but I am asking you if you didn't tell him yesterday that the first time you saw Reese Thomas Monday morning you saw him at the Master Mechanic's gate?

A. I don't think so.

Q. If you did testify to that yesterday, that was a mistake?

A. Yes, sir. I saw him at the powerhouse gate the first time, where I caught the bus.

Q. You are sure now that you saw him at the powerhouse gate the first time?

A. Yes, sir.

Q. Now, Mr. Mitchell, you, of course, knew about the abolition of the hostler helpers jobs, didn't you?

A. Yes, sir.

Q. And when did you first learn about it?

A. I can't remember when it was.

Q. Sir?

A. I don't know when it was.

Q. You saw the bulletin that was posted, didn't you?

A. I can't say that I did.

Q. Let me ask you to look at Defendants' Exhibit No. 1?

A. Yes, sir.

Q. Sir?

A. It looks like it, yes, sir.

Q. Do you know where that was posted?

A. No, sir.

Q. Do you know when it was posted?

A. No, sir.

Q. Whose duty is it to post it?

A. The Master Mechanic's.

Q. All right. You knew about it before it was posted, didn't you, Mr. Mitchell?

A. I can't truthfully say that I did, no, sir.

Q. Well then was your first information that these jobs were going to be abolished when the bulletin went up?

A. They were off when I first found it out, yes, sir.

Q. They were off when you first found it out?

A. Yes.

Q. They didn't take you into their confidence about what they were going to do out there, is that right? How long have hostler helpers been employed by the L&N Railroad?

A. I can't answer that.

Q. You don't know?

A. No, sir, I don't know.

Q. Well, have there been hostler helpers out there up until October, 1955 ever since you were employed out there?

A. That is out of my department.

Q. Sir?

A. The hostlers are out of my department.

Q. Do you know whether or not the hostler helpers have been there for the last 25 or 30 years?

A. I couldn't truthfully say that I do know it.

Q. Now, Mr. Mitchell, when you first learned that the hostler helpers jobs were going to be abolished, I want to ask you if you didn't discuss the situation with Mr. Kirchner and Mr. Parsons, and if you didn't tell them this, or this in substance, that "I believe you are going to have trouble about getting rid of these jobs"?

A. I didn't say that, no, sir.

Q. Sir?

A. I didn't say anything like that, no, sir.

Q. You didn't say anything like that?

A. No, sir.

Q. Do you say you didn't even discuss the situation with Mr. Kirchner or Mr. Parsons after this bulletin went up?

A. No.

Q. You had no discussion of any kind relating to the abolition of the hostler helpers jobs with Mr. Kirchner or Mr. Parsons, is that right?

A. That's right, yes, sir.

Mr. Taylor:

If Your Honor please, I would like to have this document marked for identification as the Defendants' next exhibit number.

(Defendants' Exhibit No. 3 was marked for identification.)

Q. Now, Mr. Mitchell, I want to ask you—

Mr. Gibson:

Let's see this a minute.

Mr. Taylor:

Oh, excuse me. I beg your pardon, I was a little impatient.

Mr. Gibson:

All right, here you are.

Q. Mr. Mitchell, I hand you a document that has been identified as Defendants' Exhibit 3.

A. Yes.

Q. Which appears to be a carbon copy of an original and ask you if you recognize it? Read it over, take your time.

A. All right.

Q. Did you see the original of that letter?

A. I imagine so.

Q. That is identified as Defendants' Exhibit 3?

A. I imagine so.
Q. It is addressed to you, is that right?
A. Yes, sir.

Mr. Taylor:
Your Honor, may I read this at this time?

The Court:
Have you offered it in evidence yet?

Mr. Taylor:
Excuse me. I offer it in evidence at this time.

Mr. Gibson:
We have no objection.

The Court:
All right, go ahead.

Mr. Taylor:
The letter is identified as Defendants' Exhibit 3. It is dated Boyles, Alabama, on October 18, 1955, Desk A, Mr. B. M. Mitchell.

"We have been instructed to abolish all outside hostler helpers jobs at Boyles roundhouse. It is understood, of course, that the herders will protect the locomotive switches at the roundhouse track when any outside moves are made.

"In our recent conversation it was understood that as many outside moves as possible would be eliminated, and when it became necessary to swap locomotives account of inspection or account defects, the engine crew would take the engine to the roundhouse and make the swap.

"I find nothing in the agreement that could be construed as justifying any complaint as such movement.

"Your co-operation will be very much appreciated."

Signed by J. B. Quiggins, Master Mechanic, with copies indicated to Mr. J. R. Parsona and L. I. Mulvaney.

Q. Now, you received this letter Mr. Mitchell, now that your recollection has been refreshed, before the bulletin was posted, didn't you?

A. Well, I discussed it with the Master Mechanic, yes, sir.

Q. Well, you got this letter?

A. Yes, sir.

Q. Before, from Mr. Quiggins?

A. He is the Master Mechanic.

Q. Well then, in case I asked the wrong question, you discussed the abolition of the hostler helpers job with the Master Mechanic before the bulletin was posted?

A. Yes, sir.

Q. And this letter refers to a discussion you had before he wrote this letter dated October 18, isn't that right?

A. That's right.

Q. Now, Mr. Mitchell, didn't you tell me just a minute ago that when this bulletin was posted, Defendants' Exhibit 1, that was the first knowledge you had that the hostler helpers jobs were going to be abolished?

A. I don't think I told you I saw the bulletin, I don't think I did.

Q. Well, didn't you tell me that when the bulletin was posted, whether you saw it or not, that that was the first time you knew they were going to be abolished?

A. Well—

Q. And if I hadn't shown you that letter dated the day before you would have stuck to that testimony, wouldn't you?

A. Well, now you asked me did I talk to Mr. Parsons or Mr. Kirchner about it. I didn't talk—

Q. Yes, sir, I also asked you when you learned about it, and I am asking you now if you didn't tell me you learned about it when the bulletin was posted?

A. I believe I did, yes, sir.

Q. You didn't tell me the correct thing, did you? You were wrong about that, weren't you?

Mr. Gibson:

That is argumentative, Your Honor.

The Court:

I sustain the objection to that.

Q. Well, now we are straight, are we not, Mr. Mitchell, that you had had at least one discussion with Mr. Quiggins about the bulletin on the hostler helpers jobs before the bulletin was posted?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Is that the only discussion you had with him?

A. I don't know how many times I discussed it with him.

Q. Well, did you discuss it with him more than once?

A. I think we did, I am pretty sure we did.

Q. And about when did this discussion take place? Now, we have got two dates fixed here. Defendants' Exhibit 1 shows that the bulletin was posted on October 19 and Defendants' Exhibit 3 shows that you received a letter on the same subject dated October 18.

Now, with relation to those dates, when did you have this conversation with Mr. Quiggins?

A. Prior to that.

Q. How long prior?

A. I don't remember.

Q. How many days?

A. I couldn't answer that, I don't know.

Q. Well, as much as a week?

A. I don't know.

Q. Could it have been as much as a week?

A. It is possible, yes, sir.

Q. Now then, you knew then at least a week before October 18—

Mr. Simpson:

May it please the Court—

Q. —that those hostler helpers jobs were going to be abolished?

Mr. Simpson:

We object to that. The witness says he doesn't know how long before the 18th, and the attorney says "Now, its certain it is as much as a week." I say that is an improper statement.

Mr. Taylor:

If the Court please he told me he didn't know anything about it before it happened. Then he says he knew about it when he got this letter.

The Court:

I overrule the objection. The jury has heard what has been said. Let's try to avoid as much repetition of detail as we can.

Mr. Taylor:

All right, sir.

The Court:

We are going into an awful lot of detail. You have been on this an hour.

Mr. Taylor:

This is a very important witness, Your Honor. I hate to take the time of the Court and jury.

The Court:

I don't want to curb your time, but just go ahead. But you have developed that aspect of the testimony.

Mr. Taylor:

All right, sir.

Q. In your discussion with Mr. Quiggins about the abolition of the hostler helpers jobs did you have any objection, did you make any objection to that proposed move on the part of the Railroad?

Mr. Simpson:

We object to that as being immaterial, may it please the Court.

The Court:
I sustain the objection.

Mr. Simpson:
What he thought about it.

Mr. Taylor:
I didn't ask him what he thought. I asked him if he stated any objection, Your Honor.

Mr. Simpson:
Entirely irrelevant.

The Court:
I sustain the objection.

Q. Now, when you discussed this with Mr. Quiggins did you discuss any possible trouble that might arise as a result of the abolition of the jobs?
A. No, sir.
Q. Sir?
A. No, sir.
Q. Nothing was said about that?
A. So far as I know there wasn't, no, sir.
Q. Now, Mr. Mitchell, as a matter of fact you had information several days before this walkout a walkout was likely, did you not?
A. No, sir.
Q. You say that didn't happen?
A. No, sir.
Q. Do you know a man named L. C. Parrot?
A. Engineer, yes, sir.
Q. How long have you known him?
A. Quite some time. He has been here and in Decatur.

Q. Several years?

A. Yes, sir.

Q. Mr. Mitchell, I will ask you if it is not a fact that you told Mr. Parrot on either Friday or Saturday before the walkout which occurred on Sunday night that it looked like there was going to be labor trouble, and for him to stay out?

A. I didn't tell him that. He didn't talk to me about it.

Q. Did you have a conversation with Mr. Parrot on either Friday or Saturday before the Sunday walkout?

A. Not concerning this walkout, no, sir.

Q. Well, what did you talk to him about?

A. I don't know whether I talked to him about anything at all.

Q. Where did you talk to him?

A. I say I don't know that I even talked to him or not. I know I didn't talk about this.

Q. I thought you said you did talk to him. I'm sorry.

A. No, sir.

Q. Now, your recollection is you don't know whether you talked to him or not, is that correct?

A. That's right.

Q. How many employees were there on duty at the Boyles Yard on October 23, if you know, or in your best judgment?

A. All of my Sunday switch engines were working.

Q. I am asking you, if you know, sir, about how many people that was?

A. There was about 20 switch engines, and there is five members to each one of them.

Q. You said you left there about 8:30 or 8:45 I believe?

A. Yes.

Q. When would the next shift normally have started to work that Sunday night?

A. 10:45 or 11:00 o'clock.

Q. Do you know approximately how many men were on that shift?

A. On the third shift?

Q. Yes, sir.

A. The night of the stoppage?

Q. Yes, sir.

A. There wasn't anybody out there.

Q. How many men were assigned to that shift that would have come to work out there, had there not been a work stoppage, if you know?

A. About 16 jobs.

Q. About how many men would that represent?

A. Five times that.

Q. Five times that?

A. Yes.

Q. Then, of course, you had Yard clerk personnel, and all of those people inside would have been there too?

A. Yes, sir.

Q. Now, do you know how many men were on the shift that would have started to work at 7:00 o'clock Monday morning had there not been a work stoppage?

A. Well there was 21 switch engines working first shift I believe at that time. That is in Birmingham and Boyles. That is besides the clerks.

Q. Did you say how many men?

A. Yes, sir.

Q. If you did I didn't hear you.

A. 21 jobs.

Q. 21 jobs?

A. Yes, sir.

Q. Let me ask you this, isn't it a fact that there are approximately 2,500 L&N employees at the Boyles Yard, or were on October 23?

A. 2,500?

Q. Yes, sir. I don't mean working all the time, but I mean employees actively employed in Birmingham by the L&N, were there not approximately 2,500?

A. I don't know.

Q. You don't know?

A. I don't know how many they have got in the Shop.

Q. All right now, I want to go into another line of your testimony yesterday, Mr. Mitchell.

A. All right.

Q. And so that we might fix the time properly, will you state again, and pardon the repetition, but what time you got back to your house after you left the Superintendent's Office Monday morning?

A. It was around 9:20 or 30, something like that.

Q. Around 9:20 or 30?

A. Something like that Monday morning.

Q. Now, you testified yesterday in response to the lawyers question that you got with Mr. Woelde that morning some time to check some waybills, is that correct?

A. That's right.

Q. What time on Monday morning did you first contact Mr. Woelde?

A. Mr. Woelde called me.

Q. Where were you when he called you?

A. At home.

Q. What time did he call you?

A. Oh, it was a little before 11:00.

Q. A little before 11:00?

A. Yes.

Q. So then you were at home from 9:20 until 11:00, is that correct?

A. Yes.

Q. All right, did Mr. Woelde arrange to come pick you up?

A. Yes, sir.

Q. Now, I am not sure about my directions, Mr. Mitchell, but based on my diagram here, so-called, is your home in this direction from the powerhouse gate (indicating)?

A. No, it is about middleways between the powerhouse and the Mechanical Office, on the hill.

Q. On the hill back up here (indicating)?

A. Yes, sir.

Q. To get to your house by road, do you come by Vanderbilt road around this way (indicating)?

A. Yes, you have to cross Vanderbilt Road.

Q. And you say then that Mr. Woelde called you about 11:00 o'clock Monday morning?

A. That's right, a little before 11:00 I believe.

Q. Did you meet him somewhere or did he pick you up?

A. He came by the house and picked me up.

Q. He came by the house and picked you up?

A. Yes, sir.

Q. You were in his car?

A. Yes, sir.

Q. Now, how long did you stay at your house?

A. Long enough for him to stop and me to get in.

Q. You got right in and left?

A. Yes, sir.

Q. This would have been about 11:30 you say?

A. No, sir, a little before 11:00.

Q. Oh, I'm sorry, a little before 11:00?

A. Yes, sir.

Q. Where did you go when you left the house in Mr. Woelde's car?

A. Master Mechanic's Office gate.

Q. To the Master Mechanic's Office gate?

A. Yes, sir.

Q. Is that the Master Mechanic's entrance that we have indicated there with the little road off the highway?

A. Yes, sir, that's right.

Q. Did you come down Vanderbilt Road from the direction of the powerhouse gate?

A. No, I don't think so. Well, I don't remember how we got on that road.

Q. You don't remember?

A. No, I don't remember.

Q. You don't remember which direction you came then?

A. We didn't come the powerhouse end of it, no, sir.

Q. You didn't come from the powerhouse end of it?

A. No, sir.

Q. Well, is there any other way for you to have come except from the other direction?

A. No, sir.

Q. From the roundhouse gate direction?

A. There are several streets that run into it right there, that run into Vanderbilt Road.

Q. You don't remember your route, is that correct?

A. No, sir, I don't remember how we got to Vanderbilt Road, no, sir.

Q. Well, you said you think you went directly to the Master Mechanic's gate?

A. The shortest way, directly as we could.

Q. The most direct way possible?

A. Yes, sir.

Q. You didn't pass any other entrances at least until you got to the Master Mechanic's gate, is that correct?

A. Didn't what?

Q. Didn't pass any other entrances to the Boyles Yard?

A. No, sir.

Q. Now, is it your testimony that you got to the Master Mechanic's gate—let me just ask you what time did you get to the Master Mechanic's gate?

A. About 11:00 o'clock.

Q. About 11:00 o'clock?

A. Yes, sir.

Q. Are you positive about that time?

A. Sir?

Q. Are you positive about that time.

A. Yes, sir, that's about right.

Q. You don't think you could be mistaken?

A. We went in the Yard five minutes after 11:00.

Q. Five minutes after 11:00?

A. Yes, sir, I'm pretty sure that's right.

Q. Let me make a note of that. All right, there was no automobile blocking that gate when you went up there, was there?

A. Partly blocked, yes, sir.

Q. Didn't you tell the lawyer yesterday that you could have gotten in the gate in your car all right?

A. We got in without moving.

Q. Without moving the car?

A. Yes, sir, we did that.

Q. Do you tell the jury that the car was not moved?

A. No, sir, it was not moved.

Q. Never moved that car?

A. No, sir.

Q. You went around it, is that your testimony?

A. Yes, sir, around the front or back of it one.

Q. Excuse me, what did you say?

A. I say we went around the front or back end of it one, one way or the other.

Q. It was not moved, you are positive of that?

A. I don't think so, no.

Q. Was there a gate at that Master Mechanic's entrance?

A. Yes, sir.

Q. Was it locked on this occasion?

A. It was closed, it wasn't locked with a lock and key.

Q. Didn't it have a chain or lock on it?

A. No, I don't think so.

Q. Is there a chain and lock customarily kept on that gate when it is closed?

A. No, it is very seldom it is ever closed.

Q. I am asking you when it is closed?

A. No, sir.

Q. Do you have a key that would unlock the lock on it?

A. I have a switch key, yes, sir.

Q. That will unlock all of the locks around there?

A. Switch locks, yes, sir.

Q. Are you telling us you don't have any recollection of whether the gate was locked or are you telling us it was not locked?

A. I don't remember whether it was locked or not, no, sir.

Q. If it was locked, you unlocked it?

A. I opened the gate.

Q. You opened the gate?

A. Yes, sir.

Q. Will you tell me, please, who you saw at the Master Mechanic's gate at five minutes past 11:00 that Monday morning when you came there with Mr. Woelde?

A. Well, there was Fireman Barnett there, Fireman Hawkins was there, Fireman Latchman was there, and Reese Thomas was there, and Jody Johnson I believe was there.

Q. How long have you known Jody Johnson?

A. Several years.

Q. What job did he have with the Railroad?

A. I don't know what job he has.

Q. You don't know what job he has. Do you know what job he had at that time?

A. No, sir.

Q. Now, you say you have known him several years?

A. Yes, sir.

Q. You have seen him frequently during that time, haven't you?

A. Quite often, yes.

Q. Is there any doubt in your mind about that being Jody Johnson?

A. No, I am reasonably sure he was there.

Q. You are sure he was there?

A. Yes, sir.

Q. Now, you know, don't you, that there are two people called Jody Johnson who work for the L&N Railroad in Birmingham, don't you?

A. Yes, sir.

Q. They call them Big Jody and Little Jody, don't they?

A. That's right.

Q. Are they father and son?

A. I think so, I am not too sure about it.

Q. Did you see Big Jody, or was that Little Jody that you saw out there that morning?

A. Little Jody.

Q. Do you know how he was dressed?

A. No, sir.

Q. You just know you saw him?

A. Yes, sir.

Q. Did you know all these men by name when you saw them out there?

A. Yes, sir.

Q. Nobody had to tell you who they were?

A. No, sir.

Q. Did you tell Mr. Woelde who they were?

A. Yes, sir.

Q. He didn't know them, is that right?

A. He didn't know all of them.

Q. Now, had you picked up your gun that you left at home, when you came back out there to the Master Mechanic's gate or was it still at home?

A. Still at home.

Q. Did Mr. Woelde have his pistol with him?

A. Not that I know of.

Q. What happened when you got up there to the Master Mechanic's gate?

A. You mean any conversation?

Q. Yes, the conversation, what did you say, and what was said to you, and please identify each person that said it.

A. I just told them I wanted to get in and check the waybills for some perishables and livestock that I understood was on the yard. They said we wasn't going in there.

Q. Who told you that?

A. Reese Thomas told me.

Q. Reese Thomas told you you were not going in?

A. Yes, sir.

Q. Is that what you tell this jury?

A. Letchman got out of his car sitting across the street and came over and got in the conversation, and he was willing for us to go in, and Thomas kept on until we did get to go in there.

Q. There wasn't one single solitary soul inside of the Yard at that time, was there?

A. Not that I know of.

Q. And there wasn't one single train running, was there?

A. Not that I know of.

Q. You and Mr. Woelde couldn't have moved a train if you wanted to, could you?

A. No, sir.

Q. You couldn't have iced any frozen meat, could you?

A. No, I couldn't ice it.

Q. You couldn't have moved any livestock, could you?

A. No.

Q. There wasn't any reason for Reese Thomas to object to your going in that Yard, was there? Just tell us.

A. I don't know. You mean why he wouldn't let us go in?

Q. There wasn't any reason for him to keep you from going in there, was there?

A. There wasn't going to be any work going on.

Q. You were not going to move any trains?

A. We wanted to check the waybills, is all we wanted to do.

Q. You were not going to move any trains?

A. No.

Q. Weren't going to do any work there?

A. No, sir.
Q. He knew that?

Mr. Gibson:
We object to that.

The Court:
I sustain the objection. He can't testify to what somebody else knew.

Q. Let me ask you something else, if Mr. Thomas didn't tell you this, didn't he tell you that if there was any livestock in there that they would go in there with you and move it if it was necessary, or water the livestock, or whatever was necessary to keep proper care of it? Didn't he tell you that?

A. Something along that line, yes.
Q. Well, he told you that in substance, didn't he?
A. In substance, yes. But he also said he didn't care about the dead meat, or something like that.
Q. He was referring to frozen meat, wasn't he?
A. That's right.
Q. Where did you get those waybills?
A. Yard Office.
Q. At the Yard Office?
A. Yes.
Q. Did you get them or did Mr. Woelde get them?
A. We both got them.
Q. Both went in?
A. Yes.
Q. You didn't have any trouble getting the waybills, did you?
A. No, just had to hunt for them.
Q. Sir?
A. No, just had to hunt for them.
Q. When did you pick them up?

A. When?
Q. Yes.
A. That morning.
Q. That morning?
A. Yes, sir.
Q. After you left your house?
A. We went to the Yard Office after the waybills.
Q. Just a minute. You told me a moment ago that you went directly from your house to the Master Mechanic's gate by the most direct route, didn't stop by any other entrance to the L&N?
A. That's right.
Q. Then you were mistaken about that, you went to the Yard Office first?
A. No, we had to go through this gate to get to the Yard Office.
Q. You didn't have any waybills when you went in there?
A. No, sir.
Q. You went to the Yard Office and got them, is that right?
A. That's right.
Q. You say that Reese Thomas told you he was not going to let you in that office, is that right?
A. Yes, sir.
Q. Did you report that to the Police Department?
A. No, sir.
Q. Or County Sheriff's office?
A. No, sir.
Q. Was your answer "No, sir"?
A. Sir?
Q. Was your answer "No".
A. No, I didn't report it.
Q. What time did you come out of the Master Mechanic's gate?

A. We was in there 25 minutes.

Q. You were in there 25 minutes?

A. About 11:30.

Q. Can you give me any estimate as to the time?

A. 11:05 until about 11:30.

Q. Now, Mr. Mitchell, could you be an hour off in your estimate of the time out there?

A. Sir?

Q. Wasn't it about 12:05 that you went in there, and about 12:35 that you came out?

A. I don't—I thought it was before lunch.

Q. I want to ask you if you will read this over and see if it won't refresh your recollection about the time?

A. Let me get my glasses.

The Court:

Will you point out some specific place?

Mr. Taylor:

Yes, sir, I can, Your Honor, to save him reading it all.

Q. Mr. Mitchell, I am referring to this right here.

A. It is 12:05 to 12:30, yes, sir.

Q. You recall now then that you went into the Master Mechanic's gate on this occasion about five minutes past 12:00?

A. Yes, sir.

Q. And stayed approximately 30 minutes, and came out at approximately 12:35, is that right?

A. Yes, sir.

Q. I believe that you stated that as you came out at 12:35 Monday afternoon that you had some conversation there after you came out, is that right?

A. That's right.

Q. What was that conversation?

A. I just wanted to show them what—the waybills we had.

Q. Did you show them?

A. No, they wouldn't look at them.

Q. Who did you talk to?

A. This whole group was still there, and I believe Reese is the only one we talked to.

Q. Did Jody Johnson come over to your car and look in the back of it, or do you recall that?

A. Back seat, yes, sir.

Q. What did he say?

A. He just looked to see if we were bringing anybody out of there.

Q. You were not, were you?

A. No, sir.

Q. About how many minutes would you say this series of discussions took place, about five or ten?

A. About five I imagine.

Q. That would make it about 12:40 then?

A. Something like that, yes, sir.

Q. After having had your recollection refreshed, you are fairly positive about the time being 12:40 p. m. Monday, is that correct?

A. Yes, sir.

Q. Reese Thomas was there, is that correct?

A. That's right.

Q. That is at the Master Mechanic's entrance?

A. Yes, sir.

Q. Approximately 4-½ miles from the Passenger Station, is that correct?

A. Yes, sir.

Q. Now, Mr. Mitchell, if anybody has stated that Reese Thomas was at the Passenger Station at 12:40 Monday they are mistaken, is that correct?

A. He was at Boyles, yes, sir.

Q. Because he was at Boyles at 12:40 Monday, is that right?

A. Yes, sir.

Q. You stated to us yesterday I believe that after you left the Master Mechanic's gate on this occasion that we are inquiring about that you did not visit the L&N premises again until Wednesday night, is that correct?

A. I think that's right, yes, sir.

Q. That includes both the Passenger Station and the Boyles Yard?

A. No, I was down at the Passenger Station that night putting trains away.

Q. Sir?

A. I was down at the Passenger Station that night putting some trains away.

Q. That is Monday night?

A. Yes, sir.

Q. Then you went to the L&N premises on Monday night?

A. Yes, sir.

Q. When was the next time you went?

A. I was down there the day they placed that stock, I don't know what day it was. I believe that was Monday afternoon, at Vanderbilt Road.

Q. You went Monday afternoon?

A. Yes, sir.

Q. Where did you go Monday afternoon?

A. I say I went to Vanderbilt Road and watched them place that stock. It was Monday afternoon they placed that stock. I didn't get on the property there, just at Vanderbilt Road there.

Q. All right, how about Tuesday?

A. I don't think I went around Tuesday at all.

Q. You didn't go to the Passenger Station or Boyles Shop or anywhere Tuesday?

A. No.

Q. Where did you spend your time Tuesday?

A. Home.

Q. At home?

A. Yes, sir.

Q. Did you talk to L&N officials?

A. Yes, sir.

Q. Who?

A. I am pretty sure I talked to Mr. Parsons.

Q. Did he give you any instructions about how to handle yourself during this walkout?

A. Other than just stay home until he called me.

Q. He just told you to stay home until he called you?

A. Yes, sir.

Q. You told us yesterday that you did go back on Wednesday night, or rather you told the lawyer that examined you. What time did you go back Wednesday night?

A. Just a few minutes before everybody went in.

Q. Can you give us your judgment as to what time of night that was?

A. It was dark, I imagine around 8:00 o'clock, 8:30, something like that.

Q. Around 8:00 o'clock?

A. Yes.

Q. If you have any doubt in your mind about that time I wish you would fix it as close as you can?

A. I don't remember what time it was, but it was on the second shift, after dark.

Q. You think approximately 8:00 o'clock?

A. Yes, sir.

Q. What gate did you go in?

A. I went in the powerhouse gate—no, I went down to the Master Mechanic's gate I am pretty sure.

Q. You went in the Master Mechanic's gate?

A. Yes, sir.

Q. Did you walk in or drive in?

A. I walked in.

Q. You didn't have any trouble, did you?

A. No, sir, there wasn't anybody around it.

Q. There wasn't anybody around it?

A. No.

Q. When you got in the Yard at approximately 8:00 p. m., Wednesday night who did you see in there?

A. There was several over there, I don't remember who they were.

Q. Were they L&N employees?

A. They were L&N employees.

Q. Who were they? I am talking about inside of the gate.

A. Inside of the Yard Office, two or three in there, but I don't remember who they were at this minute.

Q. You don't remember who they were?

A. No, sir.

Q. Did you see any men carrying weapons of any kind inside of the Yard Office there, or inside of the Yard, anywhere inside of the Yard?

A. Inside of the Yard?

Q. Yes, sir.

A. No, sir.

Q. You didn't see any detectives or anything there with weapons?

A. I don't believe he was over there at that time, Wednesday night, no, sir.

Q. Did you see any detectives there at any time during the walkout?

A. No, sir.

Q. Any people with guns?

A. No.

Q. Now, you knew before you came down here from Evansville that you had to get on this witness stand and give this testimony against Reese Thomas and Baum and these other people to keep your job, didn't you?

A. No, sir.

Mr. Taylor:

That's all. Take the witness.

Re-Direct Examination.

By Mr. Gibson:

Q. You have been on the stand quite a while, but I have one or two other questions.

You told Mr. Taylor and told the jury in response to one of Mr. Taylor's questions that you remembered Reese Thomas being at the powerhouse gate on Monday morning, I believe you said because he was the man that you had the conversation with?

A. On Monday morning?

Q. Did I misunderstand you about that?

A. He was at the powerhouse gate. I might have told you the roundhouse.

Q. Did you have any conversation with him at the powerhouse gate Monday morning?

A. Yes, sir, going to town.

Q. What was the substance of that conversation?

A. Just generally, that the Shop was shut down, that the Railroad was shut down, wasn't anybody working.

Q. Did you tell Thomas that or did Thomas tell you that?

A. Thomas told me that.

Q. In response to another question by Mr. Taylor you stated when he asked you whether you waited until you got home to telephone the Superintendent Sunday night, you said you didn't have time to telephone from your office.

I will ask you whether or not anyone of the three men who came into the office, the three firemen, said anything to you about a time limit on when you got out or anything like that?

A. Well, I think—I don't think they gave me an exact time limit, but I had to get out right now.

Q. Right now?

A. Yes, sir.

Q. Yes, sir. Now, when you went down to the Passenger Station to look after those engines Sunday night, did you see any of the men there who are Defendants in this case?

A. At the Passenger Station?

Q. Yes, sir.

A. Yes, sir, I saw Mr. Weldon down there.

Q. J. M. Weldon?

A. Yes, sir.

Q. You got on the engine at 16th Street and rode it up under the shed down there, didn't you?

A. Yes, sir.

Q. Was Weldon on it?

A. Yes, sir.

Q. Was Weldon part of the crew?

A. No, sir.

Mr. Gibson:

That's all.

Mr. Taylor:
Your Honor, may I ask one more question that I overlooked?

The Court:
Just one.

Re-Cross Examination.

By Mr. Taylor:
Q. You stated you saw somebody placing stock on Tuesday morning?
A. No, I believe it was Monday they placed it.
Q. Who placed that stock.
A. Some of the men.
Q. What men?
A. The switchmen, engineers and firemen.
Q. You say this was Monday?
A. I believe it was Monday.
Q. At what time?
A. In the afternoon.
Q. In the afternoon?
A. Yes.
Q. You saw them?
A. Yes, I saw them placing that.

Mr. Taylor:
I believe that's all.

The Court:
Come down.

(Witness excused.)

The Court:
Gentlemen, we are going to take a 20 minutes recess at this time.

(A short recess was had.)

The Court:
Call your next witness.

Mr. Gibson:
Mr. Woelde.

Mr. Taylor:
It is understood, is it not, that Mr. Mitchell is not excused? He will still be available?

The Court:
He hasn't been excused, no.

Mr. Taylor:
We may want him further.

C. E. WOELDE, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:
Q. Is this Mr. C. E. Woelde?
A. That's right.
Q. Mr. Woelde, who do you work for?
A. L&N Railroad Company.
Q. What is your position?

A. Trainmaster.

Q. At what place?

A. At Mobile, Alabama.

Q. In October, of 1955, were you also employed by the L&N?

A. Yes.

Q. Where?

A. Here at Birmingham.

Q. In what capacity?

A. As Assistant Trainmaster.

Q. Do you recall the incident in late October, of 1955, when there was a strike at Boyles?

A. I do.

Q. Did you have occasion at any time while that was going on to go to the Company's premises?

A. Yes.

Q. When was that?

A. About noon on that October 24, on Monday, on instructions of the Superintendent I went by and picked up Trainmaster Mitchell at his house and proceeded to the Boyles Yard. We were to go in and check on frozen meats or livestock on waybills at the Yard Office. Do you want me to describe the whole procedure?

Q. Yes, sir. Now then, did you on those instructions go to the premises of the L&N Railroad Company at Boyles?

A. Yes, we did.

Q. You and Mr. Mitchell?

A. Mr. Mitchell and I, yes, sir.

Q. What gate did you attempt to enter?

A. We were first going to go in the gate which is located at 39th Avenue and Vanderbilt Road that goes, the walkway goes by the powerhouse, but there was, oh, some 30 men around that gate, so we pro-

ceeded on down Vanderbilt Road and turned off on a little dirt road, I don't know the name of the road that goes back to the gate at the Master Mechanic's Office.

And there was, as we were going from Vanderbilt Road to the gate an automobile passed us about Midway between there, and drove up and drove up in front of the gate going into the Yard at that point and stopped.

When we came up we got out of the automobile, and there was three men there at that time, and there was two in this automobile. We got out and told them that we wanted to go into the Yard to check waybills to see if there was frozen meat or perishable or any animals or livestock in there that needed attention. And at first one of the men informed us we couldn't go in.

Q. Just a minute.

A. All right.

Q. Who said that to you?

A. It was a fireman. I knew him by sight only at that time.

Q. Do you see him in the Courtroom now?

A. Yes, he is here now.

Q. Will you point him out?

A. It is the gentleman there in the sport shirt.

Q. All right, sir. Now, do you see any other men in the Courtroom at the present time who were in that group?

A. Yes, there is the gentleman back—no, let's see, I don't believe I see him. Yes, the first gentleman over there next to the fellow with the short-sleeve shirt, both of those men were there.

Q. That is Mr. Barnett and Mr. Letchman, is that right?

A. That's right.

Q. What else was said?

A. Well, the gentleman I described as Mr. Thomas told us that we couldn't go in for anything. And we explained what we wanted to go in the Yard for, and the other two men said that they thought they could let us go in and check on livestock and perishables, that they should let us go in. And Thomas agreed at that time then for us, that we could go in, but he would give us 30 minutes to be back out, and if we are not out they would come in after us.

On saying that, he moved his automobile up where we could drive in the gate, and Mr. Mitchell opened the gate, and I drove in, picked him up, and we went to the Yard Office and got our waybills, checked through all of them and were back at the gate I think in about 20 minutes.

And at that time Mr. Mitchell got out and was showing Mr. Thomas, I believe at that time the waybills that we had got in the Yard Office. He told him that some of the frozen meat would have to be reiced, and Mr. Thomas stated at that time that he didn't give a damn about frozen meat, that he was interested in livestock.

And they looked in the car to see that we were not bringing anything else out other than these waybills. And when we got ready to leave he told us he was not going to let anybody in to reice the cars, or they were not going to let either Mitchell or I back in on the premises any more.

Mr. Gibson:

Take the witness.

Cross Examination.

By Mr. Taylor:

Q. Mr. Woelde, when did you come to Birmingham with the L&N Railroad?

A. I came to Birmingham on January 1, 1951.

Q. January 1, 1951?

A. Yes, sir.

Q. What was your job then?

A. I was Assistant Trainmaster in the Terminal.

Q. Was that the same job you held in October, of 1955?

A. No, in October, of 1955, I was working on the road between Decatur and Montgomery, and on a branch line we have between Birmingham and Gadsden and Calera.

Q. Was Mr. Ben Mitchell your superior in October, 1955?

A. No, directly he was not. I was working under another Trainmaster.

Q. Where was your place of duty on October 24, 1955?

A. Well, on instructions of the Superintendent it was at Boyles.

Q. Now, you had some trouble with the switchmen shortly after you came to Birmingham, didn't you?

A. Not to my knowledge, no.

Q. Isn't it a fact, Mr. Woelde, that the switchmen threatened to walk out unless they transferred you?

A. That's not true to my knowledge, no, sir.

Mr. Simpson:

We don't object to that, but we do want to be allowed ourselves to go back into some past history. The Court has held us pretty closely to what hap-

pened on this particular date. We want the same privilege.

The Court:
When was this incident?

Mr. Taylor:
I withdraw the question.

The Court:
All right, the question is withdrawn. I believe he answered though, didn't he?

Mr. Simpson:
He did answer it, yes, sir.

The Court:
The answer is excluded, then gentlemen.

Q. Now, Mr. Woelde, where were you when you got the instructions to check these waybills for livestock and perishables?
A. At my home.
Q. Where did you live?
A. I lives at 3828 38th Avenue North at that time.
Q. Who did you get these instructions from?
A. From the Superintendent of the L&N.
Q. What was his name?
A. F. W. Kirchner.
Q. You drove then to Mr. Ben Mitchell's house?
A. That's right.
Q. Did you visit the L&N premises while you were going there?
A. No. I went directly to Mr. Mitchell's house, picked him up, and then went to the L&N premises.

Q. I believe you left Mr. Mitchell's house and went by the most direct route to the Master Mechanic's gate, didn't you?

A. Yes, I would say so.

Q. You didn't go by any other gate, is that correct?

A. We drove by the gate leading to the powerhouse.

Q. You say you and Mr. Mitchell drove by the gate leading to the powerhouse?

A. Yes.

Q. This is the occasion that you and Mr. Mitchell went to check the waybills, is that right?

A. That's right.

Q. Now, are you positive that you went by that powerhouse gate?

A. I am positive we went by, yes, sir.

Q. Mr. Mitchell was in a position to know whether you went by the powerhouse gate or not, wasn't he?

A. He should have, he was in the car.

Q. If he has testified that you two went directly to the Master Mechanic's gate, is he mistaken?

Mr. Simpson:

We object to that.

The Court:

I sustain the objection.

Q. Did you stop at the powerhouse gate?

A. No, we drove by.

Q. Now, you didn't have to come down Vanderbilt Road—excuse the roughness of this diagram. You didn't have to come down Vanderbilt Road to get to this powerhouse gate, from this powerhouse gate to get to the Master Mechanic's gateway, did you?

A. If you are coming from town you do, yes.

Q. I am asking you, directly, aren't there roads coming into Vanderbilt Road from this direction (indicating)?

A. Yes.

Q. When you got to the Master Mechanic's gate, approximately, or in your best judgment what time was it?

A. Somewhere in the neighborhood of 12:00 noon.

Q. Now, when did you first become aware of any other automobile there?

A. There was two automobiles I believe when we drove up other than the car that passed us between Vanderbilt Road and the Master Mechanic's gate.

Q. Do you know who was in the car that passed you?

A. I knew by sight, yes, sir.

Q. Who was it?

A. It was Mr. Barnett and Mr. Letchman.

Q. They were in the car that passed you?

A. No, no, they were in the car that was already at the gate.

Q. Were there only two men in it?

A. I only remembered two, yes.

Q. All right, what happened to this car that passed you?

A. They stopped in front of the gate leading to the Master Mechanic's Office.

Q. I believe you told the attorney—if I am wrong, correct me.—that this car that passed you drove in front of and blocked the gate to the Master Mechanic's gate?

A. That's right.

Q. Is that correct?

A. Yes.

Q. They parked in such a fashion, did they, that you and Mr. Mitchell couldn't enter that gate?

A. That's right.

Q. As long as that car was there?

A. We couldn't enter it with the car there.

Q. With the car there?

A. We couldn't enter it with the car there.

Q. You couldn't go around either front or back of it to get in the gate?

A. No.

Q. Now, I believe you also testified that after you had this conversation with Mr. Thomas, that Mr. Thomas moved his automobile, is that correct?

A. He did.

Q. Did he himself move it?

A. I don't know whether he moved it or not, but the car was pulled ahead so we could get in.

Q. Where was Mr. Ben Mitchell when this car was being moved?

A. He was in the process of unlocking the gate and opening it so I could drive in.

Q. Did he see the car being moved?

A. He did.

Q. You didn't get out of your automobile, did you?

A. Yes, sir, I got out when we drove up.

Q. Did you get out of your car?

A. I got out of my car while we were blocked by the other car.

Q. You ~~said Mr.~~ Mitchell unlocked the gate?

A. Yes, sir.

Q. Will you please tell the jury the best you can if you can recollect just what he did in unlocking the gate?

A. To the best of my knowledge it has some kind of fastner to it that can be locked, or it can be

fastened without a lock. And he unfastened the gate and opened it. It is a big swinging gate on hinges.

Q. There was a chain around that gate where it closed, wasn't there?

A. Not to my knowledge. I didn't see that.

Q. There was a lock on it, wasn't there?

A. I didn't see any lock. I didn't see him unfasten the gate. He unfastened the gate and opened it.

Q. He unhooked the gate to open it?

A. He unhooked the gate and opened it.

Q. Where were you standing when that conversation was held about the purpose of your visit there?

A. I was standing beside my car which was parked adjacent to the car occupied by Mr. Letchman.

Q. How many feet were you from Mr. Reese Thomas and Mr. Mitchell when they had this conversation?

A. Within 6 or 8 feet.

Q. Within 6 or 8 feet?

A. Yes.

Q. Did you know the names of any of those people out there?

A. At that time, no.

Q. Now, you have identified previously a man being there by the name of Jody Johnson, haven't you?

A. Mr. Johnson was there I found out later. At the time—

Q. Do you see him in the Courtroom today?

A. No, I don't see him.

Q. You are positive he was there, is that correct?

A. He was identified to me by Mr. Mitchell after we left.

Q. Did he tell you what his name was?

A. He didn't know, he said he thought they called him "Jody."

Q. Do you know that there are two people with the L&N Railroad in Birmingham called Jody Johnson?

A. No, sir, I don't know that.

Q. As a matter of fact, you didn't know who these men were until Mr. Mitchell told you?

A. By name, no.

Q. You got very close to Reese Thomas on that occasion, didn't you?

A. I would say within 4 to 6 feet.

Q. I will ask you if it is a fact that he had a blue shirt on with sleeves rolled up?

A. At that time?

Q. Yes, sir.

A. I don't know.

Q. Do you recall how he was dressed?

A. No, I don't.

Q. Do you remember whether he had a jacket or shirt on?

A. I don't remember how he was dressed on that date.

Q. I will ask you this, if Mr. Thomas didn't state to you on that occasion this, or this in substance, if there is any livestock in there, we'll go in with you and help move it, do whatever is necessary to properly take care of that livestock; didn't he tell you that substantially, or tell Mr. Mitchell that in your hearing?

A. He made that statement in substance, yes.

Q. Now, Mr. Woelde, was there anybody in the Boyles Yard when you and Mr. Mitchell went in there?

A. We saw no one going in or in the Yard Office or coming back out.

Q. You didn't see a single solitary soul, did you?
A. Nobody.
Q. Is that right?
A. Nobody.
Q. And there were no trains moving?
A. Nothing was moving.
Q. You and Mr. Mitchell didn't go in there to move any trains, did you?
A. No.
Q. You didn't go in there to put any ice in any perishable shipments, did you?
A. No.
Q. You only went in to see what was there, is that correct?
A. We were to check waybills and see what cars were in the Yard.
Q. Mr. Thomas and these other men knew you didn't go in there to move any trains or ice any shipments?

Mr. Simpson:
We object to what they knew.

The Court:
I sustain the objection.

Q. They could see the same as you that there was no work going on in the Yard?

Mr. Simpson:
We object to that.

The Court:
I sustain the objection.

Q. When you were outside the gate did you see any work going on in the Yard?

A. No.

Q. Did you see any men in there walking around?

A. No.

Q. You saw not one soul?

A. Not anybody, I didn't see anyone.

Q. You didn't visit the L&N premises at any further time during the work stoppage?

A. Yes, I visited—that was the only time I visited the Boyles Yard.

Q. Mr. Woelde, you knew that this work stoppage was likely to occur before it came off, didn't you?

A. No, only to the effect that I had heard rumors.

Q. When did you hear the first rumors?

A. Oh, some time Sunday.

Q. About what time?

A. Some time Sunday afternoon.

Q. About 2:00 o'clock or something like that?

A. No, I believe it was later than that, some 4:00 or 5:00 o'clock.

Q. About 4:00 or 5:00 o'clock?

A. Yes.

Q. You say you heard a rumor?

A. Yes.

Q. Who is the first person who told you anything about the possibility of a work stoppage?

A. Well, it was rumored by several men, I don't remember who they were.

Q. Can you tell us one of those several?

A. No, I don't remember anyone in particular.

Q. Can you tell us whether it was an employee of the L&N or not?

A. Yes, they were employees of the L&N.

Q. Were you working Sunday afternoon?

A. No.
Q. Where were you?
A. I was at home.
Q. Were you at home when you first heard the rumor?
A. Yes, I was at home and got a telephone call but I didn't recognize who it was.
Q. I suppose he didn't identify himself, or did he?
A. No.
Q. What did he say to you?
A. He just said he had—asked me if I had heard there was going to be a strike, and I said no, only what rumors I heard the men say.
Q. Well, then, you had already heard other rumors at the time you got this mysterious telephone call, is that right?
A. That's right.
Q. When did you hear the other rumors?
A. That morning at the office.
Q. At the office?
A. Yes.
Q. Is that the Yard Office at Boyles?
A. No, that's the office downtown.
Q. Oh, you were downtown when you heard that?
A. Yes.
Q. What time was that?
A. I don't remember the time; some time that morning. I got there about 7:30 and left at 11:30.
Q. You got there at 7:30, this is Sunday morning you are talking about?
A. Sunday morning.
Q. And stayed there until 11:30?
A. Yes.
Q. You were on duty at that time?
A. Yes.

Q. What time were you supposed to be at work?

A. Around 7:30.

Q. What time are you supposed to leave?

A. Around 11:30.

Q. You didn't have any fixed schedule for Sunday morning?

A. We didn't have any set schedule to get there.

Q. Who was present? What office were you in at the time?

A. I was in the Trainmaster's Office.

Q. That is at the L&N Passenger Station?

A. Yes, adjacent to the Passenger Station.

Q. Adjacent to the Passenger Station down here on Morris Avenue?

A. Yes.

Q. How did you hear the rumor on that occasion?

A. We were in the Trainmaster's Office and the Trainmaster asked me if I had heard any rumors of the strike, and I told him that I didn't know of any, and he mentioned that he had heard that they were going to walk out.

Q. Who was this gentleman that told you?

A. Trainmaster Grimes.

Q. Trainmaster Grimes?

A. Yes, sir.

Q. Can you give us his full name?

A. R. L. Grimes.

Q. Mr. Woelde, was Mr. Grimes on duty at that time?

A. Yes, sir.

Q. Now, you have given us two occasions that you have heard of before the walkout occurred.

A. Yes, sir.

Q. Did you hear that before Sunday morning, did you hear any rumors?

A. No.

Q. Who was present when Mr. Grimes told you this?

A. To the best of my knowledge Mr. Grimes and I was in the office by ourselves.

Q. Did Mr. Grimes tell you where he had heard it?

A. No, sir, he didn't say.

Q. Did he tell you when he had heard it?

A. No.

Q. When Mr. Grimes told you that he had heard a rumor of a walkout, did he tell you when it was supposed to occur?

A. He said he didn't know.

Q. Did you tell anybody with the L&N Railroad what Mr. Grimes told you?

A. No.

Q. You didn't call—who was your immediate superior at that time?

A. Grimes was at that time.

Q. Did you tell Mr. Kirchner anything about it?

A. No, sir.

Q. Was he down there?

A. I don't know. I don't remember seeing him that morning.

Q. What did you do when you left, go on home?

A. Go on home.

Q. Getting back to this mysterious telephone call, just what did this man say to you? After you picked up the phone and said "Hello", what did he say then?

A. He asked me if that was Mr. Woelde, and I said yes, and he asked me "Have you heard any rumors of a walkout?", and I told him no. I didn't know who it was.

Q. Not knowing who it was you didn't want to tell him you had heard it that Sunday morning?

A. That's right.

Q. What did he say then?

A. He said he had heard they were going to walk-out, but he didn't know when.

Q. That he didn't know when?

A. Yes.

Q. Now, this was at about 4:00 o'clock Sunday afternoon, is that correct?

A. It was in the neighborhood of 4:00 to 5:00 o'clock. It was getting in the late evening.

Q. Is that all he told you?

A. That's all.

Q. Did you ask him who it was?

A. Yes.

Q. What did he tell you?

A. He didn't answer, he hung up.

Q. Had you ever heard that voice before?

A. To my knowledge, no.

Q. Have you ever heard that voice since?

A. No.

Q. Did you call anybody with the L&N Railroad after you got this mysterious telephone call?

A. No.

Q. Did you see Mr. Ben Mitchell that Sunday afternoon at any time?

A. No.

Q. Did you go about the premises of the L&N Railroad at any time?

A. No.

Q. When was the first time you knew there had been a walkout?

A. When I got up next morning at approximately 6:00 a. m., I looked out my kitchen window at the powerhouse gate, which I could see from my house. And when I saw several men down there in the

neighborhood of 20 or 30, why I suspected that is what had taken place.

Q. Did anybody give you any instructions on Friday, Saturday, or Sunday what to do in the event of a walkout?

A. No.

Q. You knew that there was likely to be a walkout some time around that time, didn't you?

A. No.

Q. All you knew about it was this rumor that Mr. Grimes told you about, and asked you about on that Sunday morning, and what that mysterious telephone call told you Sunday afternoon, is that right?

A. That's right.

Q. Is that right?

A. That is right.

Q. Did you read about it in the morning paper?

A. I don't remember whether I read it in the morning paper or not.

Q. You don't remember whether you did or not?

A. I read the paper. I don't remember if I read about the strike. I don't even remember—

Q. You don't remember whether the neswpaper had any articles about this work stoppage?

A. They may have. I don't remember reading it.

Q. About 2,500 men being out of work, you don't know whether it was in the newspaper or not?

A. No.

Mr. Taylor:

I believe that's all, Mr. Woelde. Thank you very much.

(Witness excused.)

Mr. Simpson:
Call Mr. Simrell.

Mr. Gibson:
May this witness be excused?

Mr. Pettus:
If he is on call. I don't know whether we can excuse him or not.

Mr. Gibson:
His place of duty is Mobile.

Mr. Taylor:
We might discuss it a little bit later.

The Court:
You will have to stay around.

H. T. SIMRELL, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Mr. Simrell, will you state your name to the jury, please?

A. H. T. Simrell, S-i-m-r-e-l-l, a hard name to remember.

Q. Talk out loud like you are talking to the furthest man away from you on the jury.

A. Simrell, S-i-m-r-e-l-l. I have to spell it most of the time.

Q. What is your address, where do you live?
A. At Inglenook, 3916 41st Avenue North.
Q. How long have you lived here in Birmingham?
A. Ever since '23, 1923.
Q. Who do you work for?
A. L&N Railroad.
Q. How long have you worked for them?
A. 38 years.
Q. What do you do?
A. I am a locomotive engineer right now.
Q. Yes, sir. Were you a locomotive engineer in October, of last year.
A. Yes, sir, I was.
Q. And also in August, of last year?
A. Yes, sir.
Q. Were you a locomotive engineer in March, April, and May, of last year?
A. Yes, sir.
Q. For the L&N?
A. Yes, sir.
Q. Here in Birmingham?
A. Yes, sir.
Q. All right. Do you remember Sunday night, October 23, last year?
A. Yes, sir, I do.
Q. What were you doing say along about 9:00 o'clock, 8:30 to 9:00?
A. We was on the spot right there at the time.
Q. Were you on the job?
A. Right on the job, yes, sir.
Q. You were on the second shift?
A. Second shift, yes, sir.
Q. Went on duty at 3:00 and got off at 11:00, is that right?
A. Well, we was relieved at 9:00, supposed to get off at 11:00.

Q. I mean the regular second shift is from 3:00 to 11:00, is it?

A. Yes, sir.

Q. Was your job in the Yard or outside of the Yard?

A. In the Yard.

Q. It was a switching job?

A. Yes, sir.

Q. Who was your fireman?

A. Raymond Thomas.

Q. Raymond E. Thomas?

A. Thomas.

Q. Did anything unusual happen?

The Court:

Did I understand you to say foreman or fireman?

Mr. Simpson:

Fireman.

The Court:

Fireman?

Mr. Simpson:

Yes, sir.

Q. Did anything unusual stop or interrupt your work that night?

A. Yes, sir, it did.

Q. Where were you when that first occurred?

A. We was standing at, the engine was just a little south of the shack.

Q. A little south of the shack?

A. Yes, sir.

Q. Maybe some of the jury doesn't understand what you mean.

A. Yes, sir.

Q. There is what you call the North Yard there at Boyles, isn't there?

A. South end of the North Yard.

Q. South end of the North Yard?

A. Yes, sir.

Q. There is a little shack there?

A. Yes, sir.

Q. Where you can get in out of the rain?

A. Yes, sir.

Q. And I believe there is a telephone in there, isn't there?

A. Yes, sir, a telephone.

Q. You say this interruption occured near the shack?

A. Yes, sir.

Q. At the south end of the North Yard?

A. Yes, sir.

Q. Were you on the engine when this occurred?

A. No, sir.

Q. You were not?

A. I was off.

Q. Were you on the ground?

A. Yes, sir.

Q. Or were you in the shack?

A. In the shack.

Q. You were in the shack?

A. Yes, sir.

Q. Where was your fireman?

A. He had went down to the tower about a block away to call the Local Chairman to see if he could get anything on the strike.

Q. Local Chairman?

A. Yes, sir.
Q. Who was the Local Chairman?

Mr. Pettus:
We object to any testimony about this man a block away, may it please the Court.
Q. Had he told you where he was going?

The Court:
I sustain the objection.

A. Yes, sir.

Mr. Pettus:
We object, hearsay, and move to exclude the answer.

The Court:
All right, I sustain the objection. That is excluded from your consideration, gentlemen.

Q. Was your fireman there with you at the time?
A. No, sir, he was not.
Q. He had gone somewhere, had he?
A. Yes, sir.
Q. That was Mr. Thomas?
A. Yes, sir.
Q. Was there anybody else there with you at that time?
A. There was several in the shack when this thing happened.
Q. All right. Did somebody come up there?
A. Yes, sir.
Q. Who was it?
A. Mr. Hall, M. L. Hall.

Q. Mr. M. L. Hall?
A. Yes, sir.
Q Do you see him here in the Courtroom?
A. Yes, sir, he is over there, there he is, right over there.
Q. Sitting over there?
A. Yes, sir.
Q. He is one of the Defendants in the case?
A. Yes, sir.
Q. Mr. Hall came up here?
A. Yes, sir.
Q. Did he say anything to you?
A. Well, he called me on the outside of the shack and asked me where my fireman was, and I told him. And he said "Tell him to get out of here right now", and I asked him what was they doing, pulling a wildcat strike, and he said—and then I asked him did they have anything on paper on it, and he said "No, just tell him what I said", and turned and walked on.

Mr Simpson:
Now, Your Honor, this may be a little bit out of sequence, but it will save bringing him back in rebuttal.

Q. Did he say anything to you at that time about filing a saw for him?
A. No, sir, he never said anything about no saw.
Q. There wasn't any saw mentioned between you at that time?
A. No, sir.
Q. Where did he go when he finished making that statement to you?
A. He went I would say north. I never watched him at all.

Q. He left you?
A. Yes, sir, he left me.
Q. Did your fireman ever come back to you?
A. Yes, sir, he came back.
Q. Did you say anything to Mr. Thomas?
A. I told him.
Q. The fireman—

Mr. Pettus:
We object to anything he said out of the presence of the Defendant as hearsay, any conversation between Simrell and Thomas, we object to it as hearsay.

Mr. Simpson:
All right, I'll put it this way.

Q. Did you repeat to him—

The Court:
I sustain the objection.

Q. —the message that had been given to you?

Mr. Pettus:
We object to that as hearsay.

The Court:
Well, overruled. He hasn't called for the contents of the message.

Q. Did you repeat the message that Hall had told you to tell Thomas?
A. Yes, sir.

Mr. Pettus:
We renew our objection on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. What was your answer?
A. Yes, sir.

Mr. Pettus:
We move to exclude the answer.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did you repeat it truthfully?
A. Yes, sir.

Mr. Pettus:
We object to that as hearsay.

Mr. Simpson:
All right.

The Court:
Sustained.

Mr. Simpson:
All right.

Q. Afer you repeated that message to Mr. Thomas what did you do?

Mr. Pettus:
We object again as making an assumption that may have—

Mr. Simpson:
That he did something?

Mr. Pettus:
We object on the ground it is hearsay.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Answer the question, please, sir.
A. What was the question?
Q. Well, the question was after you had repeated that message to Mr. Thomas what did you do.

Mr. Pettus:
We object on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. The Court said you could go ahead and answer.
A. We just stood around there a few minutes.

Mr. Pettus:
We move to exclude the answer on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. After you stood around there for a few minutes, did you stand far from or close to your engine or where did you stand?
A. Right up at the engine, on the running board.
Q. You stood around your engine?
A. Yes, sir.
Q. Did anyone else join you there?
A. Well, there was a few walking around there.
Q. Did anybody else come through the Yard or say anything to you all there?
A. Well, nothing except someone came along and said the strike was on, and the roundhouse was closing down, and "Let's go", so we just hung around.
Q. You didn't go then?
A. No, sir.
Q. Who was it that came by and said that in your best recollection?
A. I don't remember. I couldn't see, it was dark
Q. Which way was he headed?
A. They was a crowd headed towards the Yard Office.
Q. Going up into the Yard?
A. Yes, sir.
Q. That is headed north?
A. Yes, sir, coming north.
Q. Of course, it was at nighttime?
A. Yes, sir.
Q. Was it?
A. Yes, sir.

Q. This was at nighttime?

A. Yes, sir, it was dark.

Q. You say a crowd went through going up in the Yard?

A. Yes, sir.

Q. And some voice out of the crowd said to you "The strike is on", and "Get out"?

A. Yes, sir.

Q. Did they say anything else?

A. No, sir, they just kept moving on.

Q. Moving up into the Yard?

A. Yes, sir.

Q. Did you have any judgment as to who the man was that said that?

A. No, sir, I do not.

Q. Did you leave at that time, you and Mr. Thomas, your fireman?

A. No, sir, I did not.

Q. How long did you stay around there then?

A. Well, it was another crowd kind of came back. Some fellow over in the crowd hollered out, said "You better get out of here, there'll be a gang in here to put you out." so I said "We'll close the engine down and get on out."

Q. So you and Mr. Thomas then did what?

A. Closed, shut the engine down and left.

Q. On that second call do you have any judgment as to who said that?

A. I just couldn't see him.

Q. You heard his voice?

A. Yes, I heard his voice.

Q. In your best judgment whose voice was that?

A. It sounded like Claude Myrick.

Q. Claude Myrick?

A. Yes, sir.

Q. Was he a fireman?
A. Supposed to be.
Q. He was not working at that time though, he was walking around through the Yard?
A. I don't know whether he was working on the job or not.
Q. Anyway, in your best judgment Claude Myrick called out to you "You better get out of here now, or somebody will come in here and put you out"?
A. It sounded like his voice.
Q. It sounded like his voice?
A. Yes, sir.
Q. Where did you go then?
A. We shut the engine down and went on out by the Yard Office, on out the gate.
Q. And went out the gate?
A. Yes, sir.

Mr. Simpson:
You can have the witness. But, before I turn you over let me ask you this.

Q. You are familiar with the three or four gates that go into the L&N Yard out at Boyles there, aren't you?
A. Yes, sir.
Q. Well now, the powerhouse gate is the one nearest to Birmingham, is that right?
A. That's the one I went out, by the powerhouse.
Q. By the powerhouse?
A. Yes, sir.
Q. Then the Master Mechanic's gate is in the middle?
A. Yes, sir, it is over to the left.
Q. Then the roundhouse gate is the one furthest from Birmingham?

A. Yes, sir.

Q. All right. Rex's Barbecue is over on the right hand side of Vanderbilt Road as you go away from Birmingham?

A. Yes, sir.

Mr. Simpson:

That's all, I just wanted to ask that question to show that map is incorrect.

The Court:

That map is turned upside down.

Mr. Simpson:

That map is evidently turned upside down, yes, sir.

Cross Examination.

By Mr. Pettus:

Q. Mr. Simrell, you have been working for the L&N Road 38 years?

A. Yes, sir.

Q. And what other business are you engaged in?

A. I am not in any business. I've got a hobby shop.

Q. A hobby shop?

A. Yes, sir.

Q. What do you do there, repair shoes?

A. Yes, sir.

Q. Repair saws?

A. I am trying to learn how to repair them.

Q. Learn how to do it?

A. Yes, sir.

Q. You are familiar with the Rule P of the Railroad, L&N Railroad, that says you can't have any other business, aren't you? You are familiar with that Rule?

A. Well, I—

Mr. Simpson:
I ob ct to that.

The Court:
What is the materiality of that?

Mr. Pettus:
I want to show his interest, may it please the Court, whether the railroad officials would criticize him about it.

The Court:
I overrule the objection.

Mr. Gibson:
We except.

Q. Have any of the railroad officials ever taken that up with you about any of your other businesses?
A. No, sir.
Q. They have not done that?
A. No, sir.
Q. Have you made any report about it to them?
A. I guess they do.
Q. Do they know about it?
A. I suppose they do.
Q. You suppose they do.
A. Yes, sir.
Q. Now, you have sharpened saws for Mr. Hall, haven't you, Mr. Simmreli?
A. Yes, sir.
Q. Mr. M. L. Hall?
A. A couple, yes, sir.
Q. You have done that?
A. Yes, sir.

Q. And at about this time in October, of '55, you sharpened some for him, didn't you?

A. Well, it was just before the strike.

Q. Just before it or just about that time, wasn't it?

A. Yes, sir.

Q. At about that time of the nighttime that you testified about on Sunday, October 23, about what time was it that you first saw Mr. Hall?

A. About 9:15.

Q. It was 9:15?

A. About 9:15.

Q. Are you reasonably positive about that time?

A. Yes, sir.

Q. As that being the correct time when you first saw him?

A. Yes, sir.

Q. When you had your conversation with him there, did he mention anything about the saws, either that you had sharpened for him or some that he wanted you to sharpen for him?

A. No, sir, he didn't.

Q. He did not do it?

A. No, sir.

Q. Now, after your conversation there with Mr. Hall, how long did you stay there in all? How long was it before you moved off of the Company premises?

A. Well, I would say just a few minutes, 10 or 15 minutes.

Q. 10 or 15?

A. Something like that.

Q. How long was it after your conversation with Mr. Hall that you heard some other voice in the dark saying something about a strike being on?

A. About five minutes.

Q. About five minutes?
A. Something like that.
Q. About that?
A. Yes, sir.
Q. Where did that voice come from?
A. Over in the crowd.
Q. Could you identify that voice?
A. No, sir.
Q. Do you know whose voice it was?
A. No, sir, I wasn't paying too much attention to it.
Q. About how far was that voice away from you?
A. It was, oh, I would say 30 or 40 feet.
Q. 30 or 40 feet?
A. Yes, sir.
Q. But after your conversation with Mr. Hall you were still there?
A. Yes, sir.
Q. That's right, is it?
A. Yes, sir.
Q. At the same place?
A. Yes, sir.
Q. Or about the same place he talked to you?
A. Yes, sir.
Q. Then you heard the next voice about five minutes later, is that right?
A. Something like that.
Q. How much longer did you stay there before you heard another voice?
A. Well, just a few minutes.
Q. Five or ten minutes?
A. Oh, something like that, five minutes.
Q. Where did the other voice come from?
A. It was almost the same direction, just—
Q. Almost the same direction?

A. Yes, sir.

Q. Now, were the lights on out there at that time?

A. No, sir, no lights.

Q. Was it dark out where you were?

A. Dark, yes, sir.

Q. What kind of clothes was the last man that yellled out, what kind of clothes was he wearing?

A. I couldn't see him.

Q. You couldn't see him at all?

A. No, sir.

Q. You don't know whether he was white or colored then?

A. Well, no, sir, I don't think there was any colored people out there.

Q. You don't think there were any colored people out there?

A. I don't believe so.

Q. Well, you think it is a white man then?

A. Yes, sir.

Q. But you couldn't see him, is that right?

A. Yes, sir, I couldn't see him.

Q. What is the basis for your judgment that it was Mr. Myrick?

A. Well, I have heard Mr. Myrick's voice.

Q. You have heard Mr. Myrick's voice?

A. Talking to him.

Q. Was he working there near you?

A. I don't know whether he was working or not. I don't know that he was out there.

Q. Mr. Simrell, have you had some conversation in regard to this case with a Mr. Bobey, an ex-FBI Agent?

A. Yes, sir.

Q. Is he in the Courtroom now?

A. Yes, sir, yes, sir.

Q. Is he an L&N employee now?
A. I don't know. He told me he wasn't.
Q. What did he tell you?
A. He didn't tell me he was.
Q. He didn't tell you he was?
A. No, sir.
Q. Did he say anything to you about that being Claude Myrick's voice there?
A. No, sir.
Q. He didn't mention that to you?
A. No, sir.
Q. Do you see Mr. Claude Myrick here in the Courtroom?
A. No, sir, I don't.
Q. Do you know whether or not he is a Defendant in the case?
A. I don't know a thing about it.
Q. In fact, you know he is not a Defendant in this case, don't you?
A. I don't know anything about it.
Q. Now, when you walked out, about what time was it that you actually left the Company property?
A. Well, the first I realized the time it was about 9:40.
Q. 9:40?
A. Or 45, something like that.
Q. Was Mr. Ben Mitchell in the crowd there with you as you walked out?
A. Well, all I seen of Mr. Ben Mitchell, I saw it was him, we passed the Yard Officer, and he was, they said it was him, coming out the door.
Q. When you passed the Yard Office Mr. Ben Mitchell was coming out the door?
A. Yes, sir.
Q. Is that right?

A. That's right.

Q. Was Mr. Mitchell by himself?

A. No, sir, there was somebody else just walking along with him, or in the doorway.

Q. Somebody else was with Mr. Mitchell, is that right?

A. Seemed to be. Everything was dark.

Q. Do you know the clerks there in his office with him?

A. I don't know their names, I just know their faces.

Q. In the group that Mr. Mitchell was walking out with, how many men were in the group?

A. There was just two in the door.

Q. Just two?

A. Yes, sir.

Q. All right.

A. There was several on the outside.

Q. Several more outside?

A. Yes, sir.

Q. Did you join up with Mr. Mitchell's group or how far were you away from them?

A. I just joined the crowd, and followed them on out.

Q. Joined the crowd and followed them on out, is that right?

A. That's right.

Q. Were any of the clerks that you reco nize there with Mr. Mitchell?

A. No, I never paid any attention to them at all.

Q. Did you pay any attention to anybody else that was with him there?

A No, sir, never looked at him any more.

Q. Can you name any other men that were with Mr. Mitchell there?

A. No, sir, I never paid them no mind at all.
Q. You didn't pay any attention to them?
A. No, sir.
Q. And it was about 9:40 when you got out of there, is that right.
A. When I got on the outside.
Q. Mr. Mitchell walked out with you?
A. I didn't see Mr. Mitchell. I don't know which way he went, or whether he went out or not.
Q. All you saw him was at the Yard Office?
A. Yes, sir.
Q. But you saw him there at the Yard Office about 9:35, is that right?
A. Something like that. I taken it to be him.
Q. In your best judgment it was him, wasn't it?
A. Yes, sir.

Mr. Pettus:
That's all.

Mr. Simpson:
That's all. Come down.

The Court:
Do you have any further need for this witness?

Mr. Simpson:
No, sir. We would like to excuse him if we can.

Mr. Pettus:
We will excuse him.

The Court:
You may be excused from further service.

(Witness excused.)

Mr. Simpson:
Mr. R. E. Thomas.

R. E. THOMAS, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:

Q. Is this Mr. R. E. Thomas?

A. Yes, sir.

Q. Where do you live?

A. 4249 Jackson Street, Birmingham 7, Alabama.

Q. By whom are you employed?

A. Louisville & Nashville Railroad.

Q. Were you employed by the Louisville & Nashville in October, of 1955?

A. Yes, sir, I was.

Q. What was your occupation or position?

A. Locomotive fireman.

Q. Do you remember an occurrence on Sunday night when there was a strike at Boyles?

A. Yes, sir.

Q. Were you at work?

A. Yes, sir.

Q. At the time it began?

A. Yes, sir.

Q. Is that the second shift?

A. Yes, sir.

Q. Who was your engineer on your crew?

A. Mr. H. T. Simrell.

Q. What was the first that you heard about any strike, or wildcat strike or labor dispute, labor trouble of that nature?

A. Well, I would say about 8:45 p. m. on this particular day. A fireman on another job got up on my engine and asked me if I had heard anything regarding the strike. I told him that if he knew anything about it that he knew more than I did, that I hadn't heard a word.

Q. Who was that man?

A. That was N. R. Lovelady.

Q. Now then, what, if anything, did you do after having that conversation with Mr. Lovelady?

A. Well, another younger fireman and myself became quite alarmed at the rumors.

Mr. Pettus:

We object to that.

The Court:

I sustain the objection.

Mr. Pettus:

And move to exclude the answers.

The Court:

That is excluded gentlemen, that he became quite alarmed.

Q. Just state what you did.

A. Can I continue?

Q. Yes, sir, just tell what you did.

A. I became alarmed at the rumor that had been going around—

Mr. Pettus:

We move to exclude that. That is the same thing.

A. —a few minutes.

Mr. Pettus:

He repeated the same words, and we move to exclude that.

The Court:

I didn't understand what you said there last.

A. I said the younger fireman became alarmed.

The Court:

I sustain the objection to that. You can't testify to that.

The Witness:

In other words, he was—his anxiety, could I use that?

Mr. Pettus:

Well, we would prefer you not to use anything. Just leave out the embroidery and tell what happened.

A. Well, he came to me and asked me what to do. I told him I didn't have any information, and therefore I couldn't give him any advice. My being older in seniority, he was looking to me for some suggestions, and I told him that the only thing that I could suggest was that we go to the FY tower where there is a city phone, and that I would try to locate some member of the Firemen's Organization, officers or otherwise, that might be able to give us some worthwhile information. And this we did.

That happened at about five minutes of 9:00 I would say on this night. We went to FY tower and I called Mr. Otts home and got no reply, and no answer.

I called Mr. Jim Brown, Jr. and I didn't get any reply from him, and I then sought to call the Rex's Barbecue where the men generally as a rule congregate. And I don't know whether I talked to the propriety or not, he didn't give me his name.

And I asked him if Mr. Otts was around, and he said he would look, and he went outside and he came back and told me Mr. Otts wasn't near, that he couldn't reach him.

So I gave Mr. Garst the information that I had received, I told him that I didn't know of anything else to do, that it was more or less up to the individual to decide for himself, that I was in no position, either as fireman or as a member of a Labor Organization, to tell him what to do.

Q. All right, sir, what was the next thing you did?

A. Then we went back to my engine.

Q. Did you have a conversation with Mr. Simrell at the engine when you got back?

A. It seems that I met him at the footboard, back footboard of the engine when I got back.

Q. Did he give you any message or repeat any message?

A. He said there was a message for me.

Mr. Pettus:

Wait a minute, let me make an objection. We object to that as hearsay, out of the presence of any Defendant, incompetent, irrelevant, and immaterial.

The Court:

I sustain the objection to the centents of any message.

Mr. Gibson:
I asked him I believe—

The Court:
Or conversation.

Mr. Gibson:
—if he received any message.

The Court:
He started to telling about the conversation.

Mr. Gibson:
Yes, sir.

Q. Mr. Thomas don't answer my question by saying what the message was. My question was whether or not you received a message from Mr. Simrell.
A. I did get a message.

Mr. Pettus:
The same objection on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

A. I did get a message.

Mr. Pettus:
We move to exclude it on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. What, if anything, did you do after that? Just tell the jury.

A. Well, during the conversation of Mr. Simrell and some other men that were gathered around our engine to see what decision we were going to make, there was another group of men that came by, some I would say 25 yards away.

Q. In what direction were they going, if you remember?

A. I would say in a northeasterly direction, from FY tower towards the Main Yard Office.

Q. Could you see them?

A. It was very poorly lighted and I couldn't identify them individually.

Q. Now what, if anything, was said by anyone in that group to you?

A. There was some outcry, or I would say shouting probably that "You better get out of here, or we'll be back in a few minutes and throw you out."

Q. Was that said by more than one person or more than one time?

A. I would say it was a mingling of voices.

Q. Did you recognize anyone in that group of men from which this shouting or this outcry came?

A. At the particular minute of the shouting I did not.

Q. You don't know who it was that said it?

A. I do not know, I couldn't ascertain any individual's voice.

Q. Can you identify anyone who was in that group?
A. Yes, sir.
Q. Who is the man?
A. Mr. Bruce Barnett.
Q. How long have you known Mr. Bruce Barnett?
A. Some 13 odd years, however long we both have been employed by the Railroad.
Q. You both went to work about the same time?
A. Yes, sir.
Q. And you have known him all that time?
A. Yes, sir, some few months difference in our seniority.
Q. What did you do after this outcry, if anything?
A. Well, Mr. Simrell and I again got in a conference, since it seemed more or less the debate was centered on the engine crews.

Mr. Taylor:
We object to that, may it please the Court. We ask the witness be instructed not to say what he said.

The Court:
Tell what you did, Mr. Thomas, other than relate a conversation.

The Witness:
Well, I immediately left.

Q. Where did you go then?
A. I went home.
Q. Did you stay at home?
A. No, sir.
Q. Where did you go from there?
A. I got in my car and drove to the Rex's Barbecue.

Q. Did you see any of the Defendants in this case, these men who are sitting around the Courtroom, in the neighborhood of the Rex's Barbecue?

A. I think I saw one, yes, sir.

Q. Which one?

A. Mr. C. L. McCutcheon.

Q. You knew him before that?

A. Yes, sir.

Q. How long have you known him?

A. Well, he was in active service I believe at the time I was employed.

Q. Where exactly did you see C. L. McCutcheon standing?

A. Opposite the Rex's Barbecue, on the opposite side of what they call Pinson Pike, and adjacent to the roundhouse office, standing at the, I would say east end of what they call the foot log, or kind of a small bridge across a deep ditch.

Q. Is that an entrance put there for people to go in and out of the Railroad Company's premises?

A. I would think so.

Q. Is it wike or narrow?

A. Narrow; I would say 4 feet wide.

Q. You saw C. L. McCutcheon standing at the street end of that?

A. Yes, sir, not on the property.

Q. Did you say anything to him?

A. No, sir.

Mr. Gibson:

Take the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Thomas, where was this location that you saw Mr. McCutcheon? I didn't get it.

A. I beg your pardon?

Q. Where was this place that you saw Mr. McCutcheon that evening?

A. Adjacent to the Rex's Barbecue on the Railroad side of Pinson Pike.

Q. On the Pinson Pike?

A. Yes, sir.

Q. Now, turn around there. With reference to the powerhouse and the Master Mechanic's gate, locate it on the sketch, if you can put where it was?

A. This is Rex's, this would be considered Pinson Pike (indicating).

Q. Pinson Pike?

A. Yes, sir. And here is the roundhouse engine dispatcher's office, and there is a small foot log there.

Q. That goes across there?

A. That joins the L&N property with the city property.

Q. With the city property?

A. Yes, sir.

Q. He was standing on the city property over there?

A. Yes, sir, he was standing on the city property.

Q. Have you ever been an official of the L&N, Mr. Thomas?

A. Sir?

Q. Have you ever been an officeal?

A. Temporary appointment in 1946.

Q. What was that?

A. Diesel Fuel Instructor for two months.

Q. In October, of 1955, you were a fireman?

A. Yes, sir.

Q. Were you a member of the Firemen's Organization?

A. No, sir.

Q. You were not a member of the Firemen's Organization?

A. No, sir.

Q. Were you a member of any of the Brotherhoods at that time?

A. Brotherhood of Locomotive Engineers.

Q. Brotherhood of Locomotive Engineers?

A. Yes, sir.

Q. That is a Labor Organization of railroad employees like the Firemen is, isn't it?

A. Yes, sir.

Q. Now, at about what time was it that you made this call from the FY tower?

A. I would say five minutes of 9:00.

Q. And from the time until you left the Company property, how much time transpired there?

A. I would say 15 minutes.

Q. 15 minutes?

A. Yes, sir.

Q. Were you off the Company property at about 9:15?

A. At 9:15 I would be honest in saying.

Q. As being off the Company property?

A. Yes, sir.

Q. Did you go out with Mr. Simrell?

A. To a certain point, in front of the Yard Office. When he went out the main Vanderbilt gate, I branched off to the left, down the Tin Shop, and out the Master Mechanic's gate.

Q. Did you see Mr. Ben Mitchell when you went out?

A. No, sir, I did not.

Q. You did not see Mr. Mitchell?

A. No, sir.

Q. The only group of men that you heard yelling anything about a strike or work stoppage was about 75 feet away from you?

A. Something of that kind.

Q. Were the lights on where you were, or was it dark?

A. The very particular point where our engine was located, it was I would say dark.

Q. After that outcry, as you called it, occurred, did you just walk over and join that group?

A. No, sir.

Q. You didn't walk over and join them?

A. No sir.

Q. Which way did that group go?

A. Northeast, towards the Main Yard Office.

Q. Then did you follow that group on in?

A. Not at that particular minute.

Q. Not at that particular minute?

A. No, sir, it was some 15 minutes later before I left.

Q. It was 15 minutes later?

A. Yes, sir.

Q. Before you left?

A. Yes, sir.

Q. In other words, from the time that somebody in that group called out something about a strike or work stoppage, it was 15 minutes before you saw, you could see any member of that group, is that right?

A. No, sir, I could see the group within three minutes I would say after they made the outcry.

Q. You could see the group within three minutes after they made the outcry?

A. Yes, sir.

Q. How many were in the group?

A. I would say from 8 to 15 men. I didn't ascertain or didn't count them.

Q. 8 to 15 men?

A. Yes, sir.

Q. Did they have their work clothes on?

A. Some did and some didn't.

Q. Some did and some didn't?

A. Yes, sir.

Q. You have known Mr. Barnett for how long?

A. Since his employment and my employment. I would say 13 years or better.

Q. 13 years?

A. Yes, sir.

Q. You have known him off and on, and known him well, have you?

A. Well, as a fellow employee, yes.

Q. As a fellow employee?

A. Yes.

Q. You don't identify his voice as being the one that cried out, do you?

A. No, sir, I do not.

Mr. Pettus:

That's all.

Mr. Gibson:

Mr. Thomas, one more question.

Re-Direct Examination.

By Mr. Gibson:

Q. When you left that Yard on Sunday night and walked off your job, were you walking off in protest against the taking off of the hostler helpers jobs?

Mr. Pettus:

We object to that.

A. No, sir.

The Court:

I sustain the objection.

Mr. Gibson:

We except.

Q. Were you scared?

Mr. Pettus:

We object.

The Court:

Overruled.

Q. What was your answer?

A. Yes, sir.

Mr. Pettus:

We move to exclude the answer.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. What was your answer?
A. I certainly was.

The Court:
Will you excuse this witness?

Mr. Pettus:
We will be happy to excuse him.

(Witness excused.)

Mr. Simpson:
Mr. Houts.

E. E. HOUTS, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Smith:
Q. Is this Mr. Houts?
A. Yes, sir.
Q. That is E. E. Houts?
A. That's right.
Q. Where do you live?
A. 536 South 56th Street.
Q. Birmingham?
A. Woodlawn, Birmingham.
Q. Who are you employed by?
A. L&N Railroad.
Q. Were you employed by them in October, of 1955?
A. Yes, sir.
Q. What job were you doing at that time?

A. Engineer.

Q. An engineer?

A. Engineer and fireman during the year. I was running at that date, yes, sir.

Q. Are you operating as an engineer now?

A. Yes, sir.

Q. Do you recall an occasion in October, 1955 when there was a strike out there for about three days on the Railroad at the Boyles Yard?

A. Yes, sir.

Q. I believe that started on Sunday, do you recall that?

A. Yes, sir.

Q. Had you heard anything about the abolishing of the hostler helpers jobs prior to that Sunday?

A. Yes, sir.

Q. Where had you heard that?

A. I had heard it at the roundhouse. They had discussed it all over the roundhouse, that is among the men in general.

Q. Had you had occasion to discuss it with any individual that you can recall now?

A. Yes.

Q. Who was that?

A. Letchman.

Q. Mr. Letchman. Is he here in the Courtroom?

A. Yes.

Q. Can you point him out here?

A. Yes, he is.

Q. That is Mr. Letchman, the gentleman there?

A. Yes, sir.

Q. Back in the corner there?

A. Yes, sir.

Q. Where did you have this conversation with Mr. Letchman?

A. In the negineers' andn firemen's washroom?
Q. In the engineers' and firemen's washroom?
A. Yes, sir.
Q. Where is that located?
A. That is just—it is at Boyles, just out from the roundhouse.
Q. Near the roundhouse?
A. Yes, sir.
Q. All right, now, what did Mr. Letchman say to you at that time?
A. He just said that—

The Court:
When was this?

Mr. Smith:
I propose to pin him down.

Q. What date was this, the best you can tell us now, what is your recollection as to the time?
A. It was a couple of days after I had first heard of the abolishing of these jobs. To my recollection I couldn't definitely say and state the day of the week. It was a couple of days before the actual strike.
Q. A couple of days before the Sunday?
A. Yes, sir.
Q. Tell us what Mr. Letchman said at that time.
A. He just said that they were contemplating on abolishing the jobs, and that the next move that they would make would probably be to take the firemen off of the engine. It was the first move, it looked like, that they was making, and that they wasn't going to allow it.
Q. He said they were not going to allow it?
A. Yes, sir.
Q. Did he tell you what would be done to stop it?

A. No, sir, he didn't say any definite action.

Q. Did he tell you who he was talking about by using the word "they"?

A. No, sir.

Q. Did you understand what he meant by that?

Mr. Pettus:

We object to what he understood.

The Court:

I sustain the objection.

Q. Mr. Letchman is a fireman, is that correct?

A. Yes, sir.

Q. Is that what he does?

A. Yes, sir.

Q. Is he a member of the Firemen's Local?

A. Now—

Q. Do you know?

A. I have no knowledge of who the members are of the Firemen.

Q. Now, on Sunday night were you working a regular job?

A. I was working an extra Yard job off of the engineers pool board.

Q. What time had you gone on duty?

A. I went on duty at 3:00 o'clock that afternoon.

Q. That would have been the shift that ran from 3:00 until 11:00?

A. 3:00 until 11:00.

Q. When you went on duty there was everything normal?

A. Yes, sir.

Q. You were working an extra Yard job?

A. Yes, sir.

Q. Is that a switching job?

A. Yes, sir, Yard switching job.

Q. Is that a job where you make up trains?

A. On this job it's what we call a bum job, work all over the Yard, transferring cars and switching up cuts. It has no specific job to do outside of just whatever the Yardmaster needs at the time. In other words, you work in any section of the Yard, within the Yard limits.

Q. A utility job, is that right?

A. Yes, sir.

Q. Did anything unusual happen while you were on that shift?

A. Up until—everything went normal up until, oh, around 9:00. Well, around 8:30 I first heard the conversation that there was going to be a work stoppage.

Q. Who did you hear that from?

A. Just general discussion of the crews I was working with, and the ones that was switching there next to us.

Q. Who was on your crew that night?

A. The only man that to my knowledge, I mean that I am positive of was the fireman. That was D. L. Smith.

Q. D. L. Smith?

A. Yes, sir.

Q. He was your fireman?

A. Yes, sir.

Q. You don't remember your train crew?

A. No, sir. I had the crew off the switchmen's Extra Board.

Q. Not men that you work with regularly?

A. Men that I didn't work with regularly.

Q. After you heard that around 8:30, heard something about there being some trouble, what happened after that?

A. Well, we worked a few minutes after that, a little while. We had first heard it, and the engines started stopping work.

Q. Other engines started stopping work?

A. Yes, sir.

Q. What area were you in at that time?

A. I was on the Huntsville Road, just in front of the Yard Office.

Q. Just in front of the Main Yard Office at Boyles?

A. Yes, sir.

Q. Did you have any cars that you were moving at that time?

A. When they first started stopping engines, we had a small cut of cars that we finished switching up after the others had stopped.

Q. Who was stopping the other engines, Mr. Houts?

A. To my knowledge there was no certain one.

Q. These other engines, were they right in the immediate vicinity where you were?

A. They would be a couple of tracks over, or back of us on the drill track. They were pulling in there and stopping.

Q. Now, what happened as far as your engine was concerned?

A. After we finished switching the cut my crew came up to the engine and asked if I was going to stop work, and I told them that I was.

The Court:

Is that your regular crew?

The Witness:
The crew that was called for my job.

The Court:
I see.

Q. All right, what next?

A. So I told them I wanted to, before I stopped, I must clear the lead or get the engine back to the roundhouse, because it had been turned over to me at the roundhouse, I would like to take it back to the roundhouse to turn it in.

Q. Can you identify anybody on that crew that you were talking to? Does that refresh your recollection about anything?

A. To my knowledge I couldn't identify anyone.

Q. Were there any people around there at that time?

A. There was lots of them, I mean switchmen.

Q. Did you see any firemen?

A. Well, outside of my crew, in other words, I had a little debate with the switchmen as to what was going to happen to my crew, and I was concentrated on getting my engine in. I don't remember any specific one outside of my own fireman.

Q. Did you hear any conversation from anybody outside of your own crew about shutting your engine down or getting it out of there? Did you hear anything said about that?

A. Well, someone, I couldn't identify them, just yelled out, says "What's he going to do, isn't he going to quit?" I told them I was ready to quit if everybody else in my crew was quitting with me, that I just wanted to get the engine in the clear, which was my responsibility.

Q. All right, sir. Now, in that group of people did you recognize anybody that you can now tell us about?

A. You mean while—

Q. In the crowd at that time, did you see anybody there that you could recognize?

A. Not before I put up the engine, no, sir.

Q. How did you put the engine up? Were you able to get it off the main lead there?

A. Yes, sir. My crew threw the switch to the No. 1 drill which is two tracks in front of the Yard Office, and I took the engine down in the clear of the main lead and shut it down.

Q. All right, sir. Now, was there a crowd of people there at that time?

A. Yes, sir.

Q. When you returned to the Yard Office?

A. Yes, sir, quite a crowd.

Q. That was immediately after you moved the engine into the drill?

A. Yes, sir.

Q. How far did you have to move that engine?

A. Oh, I guess about eight car lengths.

Q. About eight car lengths?

A. Yes, sir.

Q. All right, sir. Tell us if you can if you recognized any firemen in the crowd at that time, when you came back?

A. Yes, only two. I saw Tommy Davis.

Q. Tommy Davis?

A. T. E. Davis.

Q. T. E. Davis?

A. Yes, sir

Q. All right, sir. Who else?

A. H. M. Baum.

Q. H. M. Baum?

A Yes, sir.

Q. Do you recall how they were dressed?

A. To my knowledge I couldn't recall how H. M. Baum was dressed.

Q. What about Mr. Davis?

A. But I did notice Mr. Davis because I was close to him while the conversation was going on, and he had on street clothes. To my knowledge it was a dark brown zipper jacket, or cloth zipper jacket.

Q. He has changed his railroad work clothes then?

A. Yes, sir.

Q. Did you hear from that group any comment about any other engine or any other engine personnel who were still working?

A. Yes, sir.

Q. Tell us about that, please, sir.

A. Someone said, yelled out that R. E. Thomas didn't want to leave the engine.

Q. That is Fireman R. E. Thomas?

A. Fireman R. E. Thomas.

Q. Go ahead.

A Someone else yelled out "Well, let's go get him." But it was in the crowd.

Q. Could you identify the person that said that?

A. No, sir.

Q. Could you see who it was?

A. No, sir.

Q. That was the crowd that Mr. Baum and Mr. Davis were in?

A. Yes, sir.

Q. All right, sir. Were any other engines working after you shut yours down?

A. Not in our vicinity, no, sir.

Q. So far as you know was that the last engine working at Boyles?

A. Yes, sir, so far as I know.

Q. I will ask you when these people were there by your engine and you were having some discussions about shutting it down, I will ask you if you were scared at that time?

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial, calls for a mental operation.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. Were you, sir?

A. Well, in a sense of the word, yes.

Mr. Pettus:

We move to exclude the answer on the same ground.

The Court:

Overruled.

Mr. Pettus:

We except.

A. From previous experience with strikes, it has never been my rule to work because of the safety end of it. And it has a certain element of not being safe, and I felt I should do as the rest of them did until the thing was settled, and I came out.

Mr. Pettus:

We move to exclude the rest of the answer on the same ground, and not responsive, argumentative.

The Court:

I sustain the objection to that. That is excluded, gentlemen.

Q. I will ask you if that was the reason why you left your engine there on that drill?

Mr. Pettus:

We object to that. It calls for a mental operation.

The Court:

As to the reasons, yes, I sustain the objection.

Q. Mr. Houts, are you or have you ever been, or are you a member of the Union right now?

A. Yes, sir.

Q. Were you a member of the Union at that time?

A. Yes, sir.

Q. What Union?

A. BFLE, Brotherhood of Locomotive Engineers.

Q. All right. Have you ever been a member of the Firemen's Union?

A. Yes, sir.

Q. Have you ever been an official of the Firemen's Union?

A. No, sir.

Q. Have you ever been an official in the Engineers Union?

A. I am at present, yes, sir.

Q. You are at present an official of the Engineers Union?

A. Yes, sir.

Q. When you were making this decision to shut this engine down was this crowd near enough to be apparent and visible to you?

A. Yes, sir.

Mr. Smith:

All right, that's all. Answer these gentlemen's questions.

The Court:

All right, go ahead.

Mr. Pettus:

Shall I proceed, Your Honor?

The Court:

Yes.

Cross Examination.

By Mr. Pettus:

Q. Mr. Houts, I hand you herewith an exhibit that has been identified as Defendants' Exhibit 1, and ask that you examine that?

A. Yes, sir.

Q. Now, do you recall having seen that notice?

A. Yes, sir.

Q. Is that the abolition of the hostler helpers jobs notice that was put on the bulletin board?

A. Yes, sir.

Q. Do you recall that?

A. Yes, sir.

Q. Was it put on the bulletin board about October 19, 1955, about that date?

A. Well, I couldn't tell you exactly what day. It was somewhere in that time, yes, sir.

Q. It was roughly about a week before that walkout that you testified about occurred, wasn't it? It was about a week before the walkout, roughly, that the notice was put up?

A. Well, it wasn't to my—I mean to my knowledge, I didn't look at it up until the—after I had had my discussion in the washroom, I hadn't seen it.

Q You hadn't?

A. No, sir.

Q. In other words, that was the general discussion that you had there that called your attention to it?

A. That's right.

Q. Is that right?

A. Yes, sir.

Q. Now this abolition of the hostler helpers jobs you testified was a subject of general discussion there, wasn't it?

A. Yes, sir.

Q. And what does a hostler helper do?

A. He helps, he works with the hostler. He fuels engines, puts on supplies and sees that the engine is in good condition for service for the Company.

Q. And then with an outside helper, after—in other words, he has duties in the supply and care of the engine, is that right?

A. He puts the supplies in the cab of the engine.

Q. After that is done and the hostler is going to make an outside move, where is the hostler helper's position on the engine?

A. Left hand side.

Q. On the left hand side?

A. Yes, sir.

Q. And the hostler is on the right hand side?

A. That's right.

Q. And does the hostler helper ride on the left hand side of the engine until the move is completed, or does he have duties while the move is in progress?

A. Well, now, coming out of the roundhouse up to the roundhouse lead, he will ride—in other words, on the inside roundhouse lead it is his duty to handle that switch.

Q. His duty to handle that switch there?

A. Letting the engine in and out.

Q. And he has to get down from the engine to handle that switch, is that correct?

A. Inside switch, yes, sir.

Q. The inside switches?

A. Yes, sir.

Q. Does he handle the switches right before you get on the main line, all switches before you get on the main line?

A. From the roundhouse to the inside switch before you get to the main line, yes, sir.

Q. If he is not doing any switching duty, where is he, he rides on the left hand side of the engine, does he?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And while riding there, does he have any duties?

A. It is his duty to—after they leave the inside switch going out on a lead, or the main line, between the inside switch and the roundhouse he usually rides the footboard, giving signals to the engineer for the move that is to be made—for the hostler, for the move that is being made.

Q. Is that the footboard on the left hand side?

A. The footboard is on the—

Q. On the front?

A. Both sides of the front and both sides of the back.

Q. Both sides of the front?

A. Yes, sir.

Q. And both sides of the back?

A. Yes, sir.

Q. And he gives signals to his hostler?

A. On the right hand side, yes, sir.

Q. Well, now, how large are those engines?

A. How large?

Q. Yes, what size are they?

A. The small ones run from two hundred to two hundred thirty thousand pounds, and we have them up to, the road engines, which get up into three hundred or three hundred fifty.

Q. The engine that a hostler moves can be of either type?

A. Or a group, yes, sir.

Q. How far out, how wide is the engine?

A. Well, I couldn't tell you exactly.

Q. Roughly, just roughly speaking?

A. It extends about the width of a—a few inches inside of the ties on each side of the railroad. In other words, it has an extension on each side of your rail of the track.

Q. Now, when the engineer is sitting on his right hand side of the engine does the works of the engine block his view on the left hand side of the train, of the engine?

A. Yes, sir.

Q. Who is now doing the hostler helper's work out there, if anybody?

A. I presume, I haven't been doing any hostling since then, but to my knowledge the laboring force is doing it.

Q. Are those the Negro laborers out there?

A. The ones that had been doing the inside hostling before.

Q. Doing the inside hostling before?

A. Yes, sir.

Q. But they don't ride the engines, do they?

A. They ride the footboard.

Q. Do they ride anywhere in the Yard?

A. None of them rides in the Yard now.

Q. They don't ride in the Yard?

A. No, sir.

Q. Mr. Houts, did you hear anyone besides Mr. Letchman make a statement that if they could abolish the outside hostler helper's jobs they could abolish the firemen's job?

A. Not any specific person that I could name. Just, that was the only conversation I had in that respect.

Q. In that line?

A. That line.

Q. You agreed with that, didn't you?

Mr. Simpson:

We object to what he agreed to.

The Court:

I sustain the objection.

Q. Did you hear any other discussion to the effect at that time that the Railroad had violated the Firemen's agreement, and violated the Railway Labor

Act in putting this notice up to abolish the hostler helpers jobs?

Mr. Simpson:
We object to that, may it please the Court.

The Court:
I sustain the objection.

Mr. Pettus:
We except.

Q. Now, Mr Houts, at what time was it that you first heard that there was any labor trouble on this Sunday evening?

A. To the best of my knowledge it was around 8:30 I heard the rumor.

Q. You heard the rumor?

A. That's right.

Q. Did you see anything that was happening at that time?

A. Not at that time.

Q. Everybody continued at work after you first heard the rumor?

A. Yes.

Q. And how long after you first heard it, you say it was about 8:30, was it, before you personally left the Company premises?

A. You mean tied my engine up?

Q. Tied your engine up and actually got off, or when did you actually get off the premises?

A. Well, I had to walk from the main—I had my car parked at the parking lot at the roundhouse, and I had to walk from the middle Yard to the roundhouse and then to the parking lot. But it was some-

where around 9:00 o'clock when I tied my engine up in the clear, and I stayed around the Yard Office for a few minutes, and then we walked on down to the roundhouse, and into the car lot.

Q. Did you see Mr. R. E. Thomas that evening?

A. No, sir.

Q. Did you see Mr. Davis?

A I did.

Q. What time did you see him?

A. It was around 9:00 o'clock.

Q. About where did you see him, where was he?

A. Standing right in front of the Yard Office.

Q. Was there anyone with him?

A. Well, there was a group of men all around.

Q. How many men were with him?

A. I don't know how many was with him, so far as him personally, but there was a large group of men just milling all around in front of the Yard Office.

Q. Large group of men?

A. Yes, sir.

Q. And he was one of them that you say that was there at that time?

A. That's right.

Q. Now, these men that were milling around the Yard Office, were there any non-operating employees there in that group?

A. To my knowledge, I couldn't tell you.

Q. Were there any clerks?

A. I don't remember seeing any.

Q. Were there any engineers?

A. The only ones I can remember was the ones that was with me.

Q. And were there any switchmen?

A. Yes, sir.

Q. Were there any firemen?

A. Well, the firemen that I remember seeing, and my fireman was the only ones that I remember seeing there.

Q. Now, at what time was it that you saw Mr. Baum there?

A. At the same time.

Q. You saw him there?

A. Yes, sir, that's right.

Q. How far was he from Mr. Davis?

A. About the distance between you and me.

Q. That is about 20 feet?

A. Well, I'm not much a judge on the footage of it.

Q. How far were you standing from those two?

A. I beg your pardon?

Q. How far were you from those men when you saw them?

A. I was within arm's length of Mr. Davis.

Q. In arm's length?

A. Yes, sir.

Q. How far were you from Mr. Baum?

A. Oh, it would be—I never did get any closer than the distance between you and me, approximately.

Q. Were the lights on there at that time?

A. Yes, sir.

Q. And can you identify any others? You say there was quite a large group of men there with him?

A. Yes, sir.

Q. Can you identify any others in the group?

A. Not to my knowledge.

Q. Did all of them have on work clothes?

A. I couldn't say.

Q. You couldn't say whether they did or not?

A. There were so many there that to my knowledge I couldn't say.

Q. At that time there was no engine running?

A. None to my knowledge.

Q. They were all closed down?

A. Yes, sir.

Q. At that time did you see Mr. Mitchell, Ben Mitchell?

A. I saw Mr. Mitchell in the office, inside the office, right after I shut the engine down. I had first stopped before that, before we had our argument about putting the engine in the clear. I walked in to call the roundhouse and asked them what they wanted me to do with the engine.

Q. You walked into Mr. Mitchell's office?

A. Into the main office, and he was sitting at the desk on the far side of the office.

Q. When you walked in there?

A. Yes, sir.

Q. You made your call, did you?

A. I did.

Q. And was it after that that you came out and moved your engine?

A. That's right.

Q. What time was it you made that call?

A. Well, it all happened around 9:00 o'clock.

Q. About 9:00 o'clock?

A. Yes, sir.

Q. But it was after that that you moved the engine?

A. It was just a few minutes, as soon as I walked out. It wasn't but about I will say three or four minutes until I started moving the engine, as soon as I told the crew.

Q. How far did you move the engine?

A. About eight car lengths.

Q. About eight car lengths, approximately that?

A. Approximately that, in the clear of No. 1 drill.

Q. And it was after that that you left the premises, is that correct?

A. That's right.

Q. Was Ben Mitchell there when you left?

A. Yes, sir.

Q. Did you see him there when you left?

A. When I—the last I saw of Mr. Mitchell he was still at the desk when I left the office. In other words, after I made my call I walked right out and got on my engine, and that was the last I saw of him.

Q. When you were on your way back out you passed the Yard Office again?

A. No, sir.

Q. You didn't see him then?

A. No, sir.

Q. In other words, the last time you saw Mr. Mitchell was after you made your phone call and after you went and moved your engine?

A. After we put the engine in the clear—

Q. Yes.

A. —we walked back to the front of the Yard Office, and that is when we had our conversation with Mr. Davis, and then from there we walked to the roundhouse and into the parking lot.

Q. At what stage was the last time you saw Mr. Mitchell?

A. Sitting at his desk after I had made the phone call.

Q. After you had made the phone call?

A. Yes.

Q. You didn't see him after you made your phone call?

A. No, sir.

Mr. Pettus:

That's all.

Re-Direct Examination.

By Mr. Smith:

Q. Mr. Houts, Mr. Pettus has asked you about various duties of the hostler's helper. The Railroad operates out there now out in the Yard, I believe the herders throw the switches?

A. That's right.

Q. Do they ride the left hand side of the engine?

A. Yes, sir.

Q. Those are duties formerly performed by the hostler helper, is that right?

A. Yes, sir.

Q. All right. You say you had parked your car down at the roundhouse area and you had to walk down there to go out that gate, is that right?

A. Yes, sir.

Q. Did you walk through the Yard then from the Yard Office to the roundhouse?

A. I had to go down the lead towards Tarrant City. We had to walk down the lead, and then down the roundhouse lead to the roundhouse.

Q. In your judgment that would be how far?

A. Oh, I would say approximately, the best of my judgment about, oh, two city blocks.

Q. About two city blocks?

A. Yes, sir.

Q. When you got down to the roundhouse did you find anybody working down there?

A. There was no one there.

Q. No one was there?

A. No one.

Q. It was deserted?

A. That's right.

Q. Mr. Houts, the herder that you mentioned there, he never rides in the cab, he is always out on the footboard, isn't that his duty?

Mr. Smith:

That's all.

Re-Cross Examination.

By Mr. Pettus:

A. When they go from Boyles to town they ride the cab.

Q. They get in the cab when they are going from Boyles to town?

A. Yes, sir.

Q. That is all the switches they throw there?

A. On the main line.

Mr. Pettus:

On the main line. All right. Thank you.

The Court:

This gentleman may be excused?

Mr. Smith:

We would like for him to be excused, yes, sir.

Mr. Pettus:
We will excuse him.

The Court:
All right, the witness is excused.

(Witness excused.)

The Court:
Gentlemen, we are going to recess for lunch until 1:30.

(Whereupon, at 12:15 p. m. a recess was taken until 1:30 p. m., of the same day.)

Afternoon Session.

1:30 P. M.

The Court:
All right, call your next witness.

Mr. Gibson:
Mr. Rich.

IRVIN RICH, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:
Q. Is this Mr. Irvin Rich?
A. That's right.
Q. Where do you live, Mr. Rich?

A. I live in Center Point, Alabama.

Q. Are you employed by the L&N Railroad Company?

A. Yes, sir.

Q. What is your job?

A. Fireman.

Q. Were you also a fireman for the L&N Railroad Company in October, of 1955?

A. Yes, sir.

Q. Do you remember the occasion on Sunday night, the 23rd of October, 1955, when a strike or walkout took place at the Boyles Yard of the L&N Railroad Company?

A. Yes, sir, I remember it.

Q. Were you working in the Yard that night?

A. No, sir.

Q. State whether or not you had occasion on that night to go to the Boyles Yard for any purpose?

A. I had occasion to go from church to the roundhouse to make out a bid on some jobs.

Q. You say you drove over there from church?

A. Yes, sir.

Q. In your automobile?

A. Yes, sir.

Q. Was there anybody with you?

A. My wife and two daughters.

Q. When you got to the L&N premises there, tell the jury where, if anywhere, you parked your automobile?

A. Well, I parked the automobile there by the foot bridge, close to Rex's Barbecue, across the street from Rex's Barbecue.

Q. What did you do then?

A. I went into the roundhouse, not into the roundhouse, but went into the Engine Dispatcher's Office,

to make out these bids for these jobs that were up the next day.

Q. Did you stay in the Engine Dispatcher's place any length of time?

A. Just a few minutes, not too long. I arrived there about 8:30, between 8:30 and 8:35, somewhere, approximately.

Q. After you completed your business there in the Dispatcher's Office, what did you do?

A. I left to go home.

Q. As you went out of the Dispatcher's Office I will ask you to tell the jury whether or not you saw anyone?

A. Yes, sir, I saw three men going towards the roundhouse, in the direction of the roundhouse.

Q. Who were those men?

A. Well, to the best of my ability, as I saw them it was Shorty Parker and Thomas.

Q. Is that Reese Thomas?

A. Yes, sir, and McCutcheon.

Q. Did you say anything to them or they to you?

A. No, sir. No, sir, there wasn't anything said. In fact I don't know whether they saw me or not.

Q. They were going in the direction of the roundhouse?

A. Yes, sir, I saw them from the back, going in the direction of the roundhouse, approximately 50 feet away, I don't know exactly, but that's my estimation.

Q. How long had you known these three men that you named?

A. Well, I have known them for the past 11 years.

Q. Did you recognize them out there that night?

A. Yes, sir, I recognized them.

Q. What did you do then, if anything?

A. I went on home. I was on my way home at the time. I went on and got in my car and went home.

Q. During the progress of the work stoppage or walkout, or strike, did you talk on the telephone at any time with anyone?

A. Yes, sir.

Q. Tell the jury whether or not at any time during the strike you talked to any of the men who are the Defendants in this case?

Mr. Pettus:

We object to that, without any identification, I mean just that general question.

Mr. Gibson:

We will get to that.

Mr. Pettus:

We would like to question him on his voir dire on that matter.

The Court:

The question is whether or not he talked to any of the Defendants?

Mr. Gibson:

Yes, sir.

The Court:

I overrule the objection.

Mr. Gibson:

He can go into that on cross examination.

The Court:
I overrule the objection.

Q. Do you remember the question, Mr. Rich?
A. Yes, sir. I did talk to some one, yes, sir.
Q. To whom did you talk who is a Defendant in this case?

Mr. Pettus:
We object to that, on the ground that the—

The Court:
It is a preliminary question, and I don't know what conversation, what the conversation is going to lead up to. I overrule the objection.

Mr. Pettus:
We except.

A. I talked to Howard Anderson.
Q. Was that a face-to-face conversation?
A. No, sir, that was a telephone conversation.

Mr. Pettus:
We move to exclude any telephone conversation without any further identification.

The Court:
I will permit him to see if he can identify him.

Q. When did that conversation with Anderson take place?
A. Around 1:00 o'clock a. m.
Q. On what day?
A. It was on Tuesday.

The Court:
Did you recognize his voice over the phone?

The Witness:
Not until he told me who he was.

Mr. Pettus:
We object to that.

The Court:
Then did you recognize his voice?

The Witness:
Yes, sir.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Now, Mr. Rich, just relate to the jury as well as you can recall it what was said by you and what was said by Mr. Howard Anderson in that conversation?

Mr. Pettus:
We object to that question, hearsay, incompetent, irrelevant, and immaterial.

The Court:
Overruled.

Mr. Pettus:
We except.

A. He asked me to come to a meeting at Ed Weldon's house at 2:00 o'clock.

The Court:
At whose house?

The Witness:
Ed Weldon, at 2:00 o'clock. And I told him then I was not a member of the Firemen's Organization, that I didn't think that they would want me at the meeting. Therefore I couldn't come. So that was all that was said, and he hung the phone up.

Q. Was there anything said by you to him or by him to you about the purpose of the meeting?
A. I asked him what the purpose of the meeting was and he stated that he didn't know, he thought that it was to line up pickets.

Mr. Pettus:
Now, we move to exclude the answer on the ground it is incompetent, irrelevant, and immaterial. The party on the other end of the line was not properly identified.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did you have any other conversations by telephone or face-to-face with any of the Defendants in this case during the period of the strike?

A. Yes, sir, I had a conversation on the telephone with another fellow, yes, sir.

Q. Did the caller identify himself to you by telling you what his name was?

A. Yes, sir.

Q. Who did he say he was?

A. O. C. Breedlove.

Mr. Pettus:

We object to that, may it please the Court, and move to exclude his answer.

The Court:

I overrule the objection, if he can identify his voice.

Q. Do you know Mr. Breedlove?

A. Yes, sir, I know him.

Q. How long have you known O. C. Breedlove?

A. About 11 years.

Q. After the caller stated his name was Breedlove, did you recognize his voice?

A. After he told me who he was, I did, yes, sir.

Q. When did that conversation take place?

A. About 11:00 p. m.

Q. On the same day?

A. At night, on the same day.

Q. That was Tuesday I believe you said?

A. Yes, sir.

Q. All right, Mr. Rich, now if you please relate to the jury the conversation you had with O. C. Breedlove as well as you can recall it?

Mr. Pettus:

We object to that.

Q. In the order in which the various things that were said were said as well as you can remember?

The Court:
Overruled.

Mr. Pettus:
We except. On all the grounds last assigned, and we except.

The Court:
Overruled.

A. He said that "This is Breedlove", and he wanted me to come down to the gate, the switchmen's gate. So I told him that I was sorry, that I couldn't come, and he said that I would lose my job. I said "Well, I've done lost my job because I am staying out."

Q. Now, Mr. Rich, was that all that was said?

A. That was all that was said, and he hung up.

The Court:
Where were you, at your home?

The Witness:
Yes, sir.

Q. That was Tuesday night?

A. Yes, sir.

Mr. Gibson:
Take the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Rich, how far were you away from the man that you have said is Shorty Parker on the evening of Sunday, October 23?

A. How far I was away from him?

Q. Yes, sir.

A. About 50 feet, approximately.

Q. 50 feet?

A. Approximately.

Q. What time was it at night?

A. I would say it was about 9:50.

Q. About 9:50?

A. Yes, sir.

Q. That is 10 minutes of 10:00?

A. Yes, sir.

Q. Now, where were you when you saw him?

A. I came out of the Engine Dispatcher's Office where they change clothes, out on a little platform, down, going from there, and I saw them. As my eyes glanced across, I saw the three men.

Q. Was this your second trip to the Engine Dispatcher's Office that evening?

A. No, sir.

Q. You testified you just arrived there at 8:30, is that correct?

A. Yes, sir.

Q. And you stayed there from 8:30 until nearly 10:00 o'clock?

A. Yes, sir.

Q. At the Engine Dispatcher's Office?

A. 8:30 until nearly 9:00.

Q. You just testified you saw them at 9:50, is that correct?

A. No, 8:50.

Q. 8:50?

A. 8:50, yes, sir.

Q. And he was about how far away from you?

A. I would say 50 feet.

Q. 50 feet?

A. Approximately, yes, sir.

Q. Where were you standing when you saw him?

A. I was not standing, I was moving, I was coming out, like I said, on the little platform, coming down to go home.

Q. Were you standing in back of any building or anything watching them?

A. No, I came out in front of the building.

Q. In front of the building?

A. Yes.

Q. Well, did he have his back to you when you saw him?

A. Yes, sir.

Q. Was he moving in a different direction from what you were?

A. Yes, sir, he was moving in a different direction.

Q. Did he ever turn his face towards you?

A. No, sir.

Q. So you are identifying him just from looking at his back?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And it was dark, is that correct?

A. It was dark, yes, sir.

Q. And you are not positive that that was Mr. Parker are you, Mr. Rich?

A. Well from, just like I said, I wouldn't take an oath that it was those boys. Of course, I have been knowing them for some time.

Q. Yes.

A. Knowing and seeing the walk, and everything.

Q. These telephone calls, Mr. Rich, you identified them because some man at the other end of the line gave you a name, isn't that the basis on which you identify them?

A. Yes, sir. I identify them by the voice, after they told me who they were. A lot of times a person not familiar, particularly not using the phone, if someone calls in, unless he tells you who he is sometimes you don't recognize the voice.

Q. Yes. And in this case, unless the men had told you who they were you would not have recognized their voices, would you?

A. That's right. That's correct.

Mr. Pettus:

We move to exclude the testimony as to the telephone calls, just based on simply what someone told him over the phone.

The Court:

I overrule your motion.

Mr. Pettus:

We except.

Q. Mr. Rich, what other business are you engaged in besides railroading?

A. What other business?

Q. Yes, sir.

A. I am not engaged in any other business except I do take contracts. So far as business, my business, I don't have any business establishment. I do building, construction work for different people.

Q. Now, Mr. Parsons that used to be a railroad official here knew about that, didn't he?

A. Well, I don't know that he did, no, sir.

Q. Did he come up there when you were pursuing this other building one day?

A. Yes, sir, he has been around my building, yes, sir.

Q. Mr. Parsons has been transferred out of here now too, hasn't he?

A. He's not here.

Q. He's not here any more, is he?

A. He's not here, no, sir.

Mr. Pettus:

That's all.

Re-Direct Examination.

By Mr. Gibson:

Q. Mr. Rich, at the time the man you identified by his own statement and his voice as O. C. Breedlove, and he asked you to come down to the switchmen's gate, will you tell the jury whether or not he told you what he wanted you to do down there?

A. Well, he told me—

Mr. Pettus:

We object to that, not in rebuttal.

The Court:
Overruled.

Mr. Pettus:
We except.

A. He told me that he wanted me to come down there to help them out, that the switchmen were trying to go in down there.

Q. Did he say what he wanted you to do?

A. No.

Q. About that?

A. No, he just didn't say what for me to do, he just told me to go down there to the gate.

Q. Come down there and help them out?

A. Yes.

Q. That some of the switchmen were trying to go in?

A. That's right.

Q. At the time you saw the three men, H. K. Parker, Reese Thomas, and C. L. McCutcheon on Sunday night, were those three men anywhere close around the washroom, clustered up around the washroom, or were they some distance away?

A. They were a distance away. The one time I saw the three, as I stated before, is when they were going across towards the roundhouse.

Q. And there are some tracks in between where you were and where they were?

A. That's right.

Q. About how many?

A. Oh, it was about three.

Q. They were headed into the Yard, not out of the Yard, when you saw them?

A. That's right, they were headed in towards the direction of the roundhouse.

Mr. Gibson:
That's all.

The Court:
All right.

Mr. Pettus:
That's all.

The Court:
Do you have any further use for this witness?

Mr. Gibson:
May this witness be excused?

Mr. Pettus:
So far as we are concerned.

The Court:
All right, you may be excused.

(Witness excused.)

Mr. Simpson:
Call Mr. Saylor.

E. D. SAYLOR, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Will you state your name to the jury, please, Mr. Saylor?

A. E. D. Saylor.

Q. Where do you live?

A. Gardendale, Alabama.

Q. Who do you work for?

A. L&N Railroad.

Q. What do you do?

A. Fireman.

Q. Do you belong to any Labor Organization?

A. Yes, sir.

Q. Which one?

A. Brotherhood of Locomotive Firemen.

Q. Brotherhood of Locomotive Firemen?

A. Firemen and Enginemen.

Q. Enginemen and Firemen?

A. Yes, sir.

Q. Or Firemen and Enginemen?

A. Yes, sir.

Q. Were you a member last October?

A. Yes, sir.

Q. Were you here on Sunday, the 23rd, when that strike started that happened in October?

A. Part of the day, yes, sir.

Q. Were you around the L& N plant, L&N Yards at Boyles that day?

A. I got off about 4:00 o'clock I believe 3:30 or 4:00 that morning and went home.

Q. I see. Were you around there that night?

A. No, sir.

Q. Were you around there Monday?

A. No, sir.

Q. Did you have any communication with any of the Defendants here during the course of that strike, Sunday morning, Tuesday or Wednesday?

A. Well, sir, I went fishing Sunday, came back, went to the river and came back Tuesday night about dark, a little after dark. And my wife told me that someone had been calling for me. And I said "Who is it?" She said "I don't know.'

So there were a number there and I called it, and someone answered, and they wanted me to go down to the Railroad. That was Tuesday.

Mr. Taylor:

Just a minute. We object to this conversation. He hasn't even identified who he was talking to.

The Court:

There has been no identification yet.

Q. Go ahead and finish, please, sir.

A. That was Tuesday, Tuesday night. I didn't go. I believe I said I went Tuesday night, but it was Wednesday night I went down there. And Tuesday night they called me, and I didn't go down until Wednesday afternoon at 4:00 o'clock, I believe.

Q. You went down Wednesday afternoon at 4:00 o'clock?

A. Yes, sir.

Q. What did you do when you went down?

A. Well, I really didn't do anything.

Q. What were you there for?

A. They told me to stay at a road there going into the Railroad Yard and to see who goes in and who comes out. That was my instructions.

Q. How long were you to sit there?

A. I stayed there until about 7:00 o'clock.

Q. Beginning what time?

A. I believe it was 4:00 o'clock.

Q. 4:00 until 7:00?

A. Yes, sir.

Q. Who did you relieve there on that job?

A. I honestly don't know. The boy that was there, I do not know him, but I believe it was Mr. Stallard.

Q. Mister who?

A. Mr. Stallard.

Q. Who relieved you?

A. Well, a fellow—and Mr. Breedlove came by about 7:00 o'clock and told me to go home.

Q. Told you to go home?

A. Yes, sir.

Q. That was on what day?

A. That was on Wednesday evening.

Q. On Wednesday evening Breedlove came by and relieved you of duty?

A. About 4:00 o'clock.

Q. About 4:00 o'clock, and told you to go home?

A Yes, sir.

Q. All right now, do you know who the gentleman was—

The Court:

It is not shown yet that he knew who it was that made that call.

Mr. Simpson:

I know, but I just showed that he went on picket duty, or went on this sitting job, regardless of who it was.

The Court:

All right.

Mr. Simpson:

Now, I am going back to try to show if he knows who put him on that job.

The Court:

All right.

Q. Did you recognize the voice that talked to you over the telephone?

A. Well, I took it to be Mr. Breedlove.

Q. Well, was that your best judgment?

A. Yes, sir. I couldn't swear to it.

Q. How long have you known Mr. Breedlove?

A Oh, possibly 10 years.

Q. Are you familiar with his voice; you have talked to him?

A. Fairly so, yes, sir. I have not talked to him over the telephone though before.

Q. You answered this number?

A. Yes, sir.

Q. That was left there for you?

A. That's right.

Q. From your acquaintance with Mr. Breedlove's voice over the years, it was your judgment at the time that it was Mr. O. C. Breedlove talking to you?

A. That's right.

Q. As a matter of fact, did he tell you who he was?

A. Well, now, I really don't remember about that.

Q. Whether he called his name or not?

A. No, sir, I just couldn't give you that.

Q. It is your best judgment it was Mr. Breedlove that you were talking to?

A. Yes, sir.

Q. And told you when to report?

A. Yes, sir.

Q. What did he call the duty that he wanted you to do?

A. Well, now, I don't remember fully about that, but he said "We just want to know who goes in and who comes out."

Q. Did you see anybody go in?

A. Not a soul.

Q. Not a soul?

A. No, sir.

Q. All right.

A. No, sir.

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. You didn't make any report to anybody about what you saw, did you?

A. No, sir.

Q. You just sat down there?

A. Yes, sir.

Q. Were you just on the public highway?

A. Well, no, I don't believe it is a public highway, it is more of an alley.

Q. It is more of an alley, is it?
A. Going into the Yards.
Q. Where you could watch the Yard?
A. Yes, sir.
Q. You were not on Company property, were you?
A. No, sir, no, sir.
Q. You just sat down there for about 3 or 4 hours, and nothing happened, is that right?
A. Not a thing, no, sir.
Q. I see.
A. I got very lonesome, in fact.
Q. Now, this telephone call that you got, are you able to identify the voice of your own knowledge as being that of Mr. Breedlove?
A. I couldn't hardly swear to it because that would be kind of—you know, you think you recognize a voice many times when you don't in reality.
Q. It is possible that it was somebody else that called you?
A. Yes, sir, it could have been an imitation or someone mimicking, yes, it could have been. I say that in all probability it could have been.

Mr. Pettus:
All right, thank you.

Re-Direct Examination.

By Mr. Simpson:
Q. It was Mr. Breedlove though that came along and relieved you of duty?
A. Yes, sir.

Mr. Simpson:
That's all. Come down. Call Mr. Chapman. May Mr. Saylor be excused from further attendance?

Mr. Pettus:
We can excuse him.

The Court:
Unless there is objection you may be excused.

(Witness excused.)

P. O. CHAPMAN, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you please state your name?
A. Paul O. Chapman, or P. O., whichever way you have got it there.
Q. How is that?
A. P. O. Chapman.
Q. Where do you live?
A. 3810 40th Avenue North.
Q. How long have you lived in Birmingham?
A. I have lived in Birmingham, let's see, since 1939.
Q. And who do you work for?
A. L&N Railroad.
Q. What sort of work do you do?
A. Locomotive fireman.
Q. You are a fireman?
A. Yes, sir.
Q. Do you belong to any Labor Organizations?
A. I belong to the Firemen's Organization.

Q. Brotherhood of Locomotive Firemen and Enginemen?

A. That's right.

Q. How long have you belonged to them?

A. Well, about two months this last time.

Q. Did you belong to them before?

A. Yes, sir.

Q. All right. Do you recall Sunday, October 23, last year, when a short strike occurred out here at the L&N Yards at Boyles?

A. Yes, sir.

Q. Where were you that Sunday night?

A. On Sunday morning I was called out for a 7:55 switch engine and worked until 7:20 that afternoon, on that particular day.

Q. You got off at 7:20?

A. Yes, sir.

Q. Where did you go?

A. I went home.

Q. And did you come back over there in the neighborhood of the Yards later that night?

A. Well, me and my wife went down on 31 Highway to take supper out there at a Drive-In out there. She likes to take her meals out there, and she wanted to go out there that night to take supper.

Q. Did you ever get back in the neighborhood of the Rex's Barbecue there at the Master Mechanic's gate or roundhouse gate?

A. I did that particular night, yes, sir.

Q. What time did you get there?

A. It was around between 8:30 and 9:00 o'clock the best I recall.

Q. 8:30 to 9:00 o'clock?

A. Yes, sir.

Q. Did you see anybody there that you knew that Sunday night?

A. Well, I expect I did, but I don't recall just offhand who it was now, it's been a good while ago.

Q. Did you have any conversation with anybody there about picket duty that night?

A. I spoke to my Local Chairman, I asked him what the situation was, and he said he didn't know until he got a long-distance call from higher up.

Q. Did you have any conversation there with anybody about picket duty that night?

A. I probably did, but I don't recall just now who it was.

Q. Do you know Mr. Breedlove?

A. Yes, sir.

Mr. Pettus:

We object to leading him, may it please the Court.

The Court:

Overruled.

Q. Did you do any picket duty?

A. Yes, sir, I did.

Q. When did you go on picket duty?

A. About 10:00 or 10:30 that night, the best I remember.

Q. That is Sunday night?

A. Yes, sir.

Q. Well, do you remember who assigned you to the picket duty that night?

A. To be certain, no, sir, I don't.

Q. Have you any recollection about it?

A. I remember talking to some of the men down there, but I couldn't recall just now who it was.

Q. Did somebody assign you to picket duty?

A. Well I— they might have, but I more or less figured it was my duty, more or less, to go on picket duty. I don't recall just now who it would have been.

Q. Well, why was it your duty; because you were a member of the Firemen's Organization?

A. Yes, sir.

Q. All right, now, then were did you go on duty as a picket?

A. At what they call the powerhouse gate, next to the parking lot there.

Q. Powerhouse gate?

A. Yes, sir.

Q. Now that is the gate nearest towards Birmingham in the Yards, isn't it?

A. Yes, sir.

Q. Who else went on duty there with you?

A. A fireman named W. T. Owens, the best I recollect.

Q. Where did you all stand?

A. Right there about, I guess as far as from here to the back window from the gate there, built up a fire there.

Q. Built you up a fire about as far as across this Courtroom, the length of this Courtroom?

A. Approximately that distance.

Q. From the Company gate?

A. Yes, sir.

Q. You were out there between the road, the Vanderbilt Road and the Company's gate?

A. Something like that, yes, sir, Company's fence.

Q. How long did you stay there?

A. I stayed there around until between 6:30 and 7:00 o'clock next morning.

Q. How long did Mr. Owens stay there with you?

A. He left there before I did. I don't know exactly what time he did leave

Q. All right. Who relieved you?

A. That's another question I can't answer offhand.

Q. Did somebody relieve you?

A. Evidently they did, but I can't recall who it was now.

Q. It is your best recollection somebody came and relieved you, is that right?

A. I wouldn't have left the post without somebody representing the firemen being there.

Q. You wouldn't have left, you know, unless there had been somebody there to take your place, is that right?

A. Yes, sir.

Q. But you remember Mr. Owens had already left before you?

A. Yes, sir.

Q. Now, you can't tell us who it was that took your place as a picket there at that gate?

A. That has been right at eleven months.

Q. That's right.

A. That's a long time to remember something.

Q. I know it.

A. How come me to remember Owens, we left Rex's Barbecue together.

Q. To go down and take your place as pickets?

A. Yes, sir.

Q. Do you remember who you relieved, if anybody, or were you the first picket that took up that place?

A. I was the first picket.

Q. When you got off picket duty there at 6:30, you say about 6:30 in the morning, you say it was about 6:30?

A. Between 6:30 and 7:00 o'clock.

Q. Did you go right straight home?

A. My wife, she was working at the Humming Bird Grill there about one block north of there at that time. I went by and ate breakfast and went on home and went to bed.

Q. Now, did you go in the Yard with anybody that day?

A. Yes, sir.

Q. What time of day was that?

A. Now, wait a minute, I'm about to get my own self crossed up. That was after 7:00 o'clock. Some of the car men, I don't know exactly who they were now, wanted to go through there and see was there anybody in there.

Q. They wanted to go through the Yards to see if anybody was working?

A. Yes, sir.

Q. And was that—

A. They wanted a respresentative of the Firemen's Organization to go with them.

Q. They wanted a fireman to go with them?

A. Yes, sir.

Q. Did you go with them?

A. Yes, sir.

Q. And you went in as a representative of the Firemen?

A. Yes, sir.

Q. For what purpose?

A. To see if anybody was working.

Q. To see if there was anybody working in the Yard?

A. Yes, sir.

Q. Just tell the jury whether that was immediately after you got off of picket duty at 6:30?

A. Mr. Owens was still there on the gate when I left. He left at the time I went in with those men and came back.

Q. Where did you go? First I will ask you how many men were in this gang that went through the Yards?

Mr. Pettus:
We object to the use of that word "gang."

Mr. Simpson:
Well, I don't mean to—

The Court:
Overruled.

Mr. Pettus:
We except.

Q. What did you call it, crowd?

A. That's what I would call it.

Q. All right, call it a crowd. How many were in this crowd of men that went through the Yard?

A. I guess there was between 18 and 20.

Q. 18 or 20?

A. Something in the neighborhood of that. I don't remember the approximate number.

Q. Where did they enter the property, the L&N Yards?

A. At the powerhouse gate.

Q. At the powerhouse gate?

A. Yes, sir.

Q. Where did you go?

A. We went up there to the powerhouse and split up into two different sections.

Q. All right.

A. One section went in the north part of the Yard, and we went in the south part of the Yard, I went in the south part of the Yard with the others.

Q. The crowd you went with went to the south part?

A. Yes, sir.

Q. How far down did you go?

A. Went to the south Yard shack, cut across the main line, came back up to the Yard Office, and came back out the gate.

Q. Did you see the other crowd that went in when they came out?

A. No, they had done come back when we got there.

Q. You don't know where they went out of the Yard?

A. No, sir.

Q. How is that?

A. No.

Q. You don't know where they went out?

A. No.

Q. Now, that was Monday morning?

A. Yes.

Q. Then you went and got your breakfast and wife and so forth?

A. Yes, sir.

Q. You had forgotten that part of it, had you?

A. Like I say, it's been so long.

Q. I realize that.

A. I had to recall back before I could recollect and get that straight off.

Q. I realize that?

A. Yes, sir.

Q. Now that night what did you do, did you go back on picket duty Monday night?

A. I went back to the same post, yes, sir, Monday night.

Q. You took up your post there at what time?

A. It was around, the best I remember, around 8:00 o'clock.

Q. Around 8:00 o'clock?

A. Yes, sir.

Q. Is that P. M.?

A. Yes, sir.

Q. Who did you relieve, who was holding the post when you got there?

A. I don't know, sir, now.

Q. Do you know that there was somebody holding it that you did relieve?

A. Yes, sir, I do remember, there probably was. In fact I know there was, but I don't recollect who it was now.

Q. Was it one of the firemen?

A. Yes, sir.

Q. All right. And you stayed there until what time that Monday night?

A. Well, right close to between 6:30 and 7:00 o'clock next morning.

Q. You stayed there all night again?

A. Yes, sir.

Q. How is that?

A. Yes, sir.

Q. When you shake your head that way, we don't know what you mean by it.

A. Yes, sir.

Q. You stayed there all night again Monday night?

A. Yes, sir.

Q. Who relieved you next morning, the next morning Tuesday?

A. There was someone, but I don't recall who it was.

Q. One of the firemen?

A. Yes, sir.

Q. One of the firemen relieved you Tuesday morning?

A. Yes, sir.

Q. Where did you go then?

A. I went down to the cafeteria, had my breakfast and went on home and went to bed.

Q. All right now, you slept most of that day, did you?

A. Yes, sir.

Q. What did you do the next morning Wednesday? Do you remember what time you got up Wednesday?

A. I slept until after dark Wednesday afternoon.

Q. All right. Did you do all of your picket duty out there at the Yards or did you get sent somewhere else?

A. Well, I did do about 2 or 3 hours, maybe less than that, at Morris Avenue and 20th Street the last night, the night that the thing was straightened up to go back to work.

Q. That was Wednesday night?

A. Yes, sir.

Q. Who told you to go down there?

A. Offhand I can't recall it.

Q. You can't recall?

A. No, sir.

Q. To refresh your recollection, was it Mr. Howard Anderson that told you to take up that post?

A. It could have been, but I wouldn't swear to it.

Q. Who did you relieve down there at Morris Avenue and 20th Street? You remember walking up there and relieving a man, don't you?

A. There was somebody there, but I can't recall now who it was.

Q. To refresh your recollection, wasn't that Mr. Grissom?

A. (No response.)

The Court:

If you have no recollection just state so. Mr. Chapman.

The Witness:

I don't remember, to tell you the truth.

Q. You can't recall, but you did relieve some fireman there?

A. Yes, sir.

Q. And how long did you stay there?

A. Well, I got there around, I guess around 8:00 o'clock.

The Court:

Was this Tuesday evening or Monday evening?

The Witness:

That was Wednesday afternoon.

Q. Wednesday afternoon?

A. Wednesday afternoon.

The Court:

I see, Wednesday afternoon?

The Witness:
Yes, sir.

Q. All right.

A. Somebody come around there and give me notification to come around to the Chief Special Agent's Office, Mr. Camp, that they had had a meeting somewhere up there in some suite, some hotel here in town, and they come to an agreement to go back to work. I went on around to Mr. Camp to get the official notification of it.

Q. All right. During the night of Tuesday night that you were out there all night at picket duty at the powerhouse gate, I will ask you whether or not someone drove up to see if somebody was on duty, to check up with you, and see that you were on your post?

A. Somebody could have seen about it. Best I remember somebody came by there. I don't recall who it was now.

Q. To refresh your recollection was it Mr. Howard Anderson that drove up there about 8:00 o'clock in the morning to see if you were on your post of duty on Tuesday night?

A. I don't know. After staying up that many hours, it could have been and it couldn't have been, I couldn't swear to it.

Q. Did you ask him to get somebody to relieve you, that you were mighty sleepy?

A. Whoever the party was, I did.

Q. You remember asking him to get somebody to relieve you?

A. I spent 12 hours there.

Q. That's right.

A. The second night, and third night in a row.

Q. Now, you remember the incident, don't you?

A. Yes, sir, I remember the incident.

Q. You are just not able to tell these gentlemen who that individual was that came up to inspect you on your post there?

A. Not to remember it eleven months. That's a pretty good while to remember that.

Q. Well, that has about got out of your mind?

A. Yes, sir.

Q. And did he get somebody to relieve you?

A. No, sir.

Q. And you had to stay there until 6:00 o'clock?

A. Yes, sir.

Q. Is that right?

A. Somebody showed up around between 6:30 and 7:00 o'clock that morning.

Q. Somebody did show up to take your place on the picket line?

A. Yes, sir.

Q. Did you see anybody going in or coming out of the Yard while you were on picket duty there?

A. No, sir.

Q. Those two nights?

A. No, sir.

Q. What?

A. The first night, there was only one night that I saw anybody, or early Monday morning, the only time that I saw anybody come there to try to go in.

Q. That was when that crowd of men, about 25 you said, went in and split up into two parts?

Mr. Pettus:

We object to that, it is a misstatement. What he said was about 20.

Mr. Simpson:
Let's not be technical about it.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. How many were there?
A. Well, just to give you an exact count I couldn't do that to save my life.
Q. What is your recollection about how many men came in, the whole crowd?
A. Around 18 or 20.
Q. Around 18 or 20?
A. Yes, sir.
Q. What were your instructions as a picket there to do?
A. Just ask the men not to go to work if they would.
Q. Keep anybody from going in there and going to work?

Mr. Pettus:
Now, we object to that as a misstatement of what the witness just said. He didn't say anything like what Mr. Simpson said.

The Court:
I sustain the objection.

Mr. Pettus:
It is his witness, on direct examination.

Mr. Simpson:
All right.

Q. Go ahead.
A. They said not to try no rough stuff or nothing, just ask them politely, we would appreciate it if they wouldn't go in and go to work.
Q. Tell them you would appreciate it if they wouldn't go in and go to work?
A. Yes, sir.
Q. And the man that put you out there, whether it was Mr. Breedlove or Mr. Anderson gave you those instructions?
A. They didn't want no rough stuff.
Q. They didn't want any rough stuff?
A. I wouldn't have it nohow in the first place.
Q. What?
A. I don't see having rough stuff to start with.
Q. You are not one of the rough stuff boys, are you?
A. No, sir.
Q. You didn't want any rough stuff so far as you were concerned?
A. Well, my daddy taught me not to fight if I could help it.
Q. Well, there had been a lot of rough stuff on the picket lines out there just before that, hadn't there?

Mr. Pettus:
I object to that.

A. I never had seen nothing.

The Court:
I sustain the objection.

Mr. Pettus:

Don't answer. The Judge sustained the objection.

The Court:

I sustain the objection.

Mr. Simpson:

All right.

Q. What was the reason that you were to give men to keep them from going in there? What was the argument that they told you to give?

A. They didn't say give no argument.

Q. Just ask them not to go in?

A. Yes, sir.

Q. There wouldn't be any argument about it, it was just a question of asking them not to go in?

A. That's right.

Q. Is that right?

A. Yes, sir.

Q. If they went in anyway were there any instructions about your reporting that to somebody?

A. No, sir.

Q. You were to observe who it was though, weren't you, find out who it was?

A. Well, if I knew who it was. Of course, there is a lot of men in the shop I couldn't call their names if they were going to hang me right now.

Q. They asked you to come up to the gate where the switchmen were wanting to go in and they were afraid they were going to break over the line and go in up there?

A. No, sir.

Q. They didn't ask you to go up there and help hold that gate?

A. No, sir.

Mr. Simpson:

I believe that's all. You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Chapman, do you know a Mr. Robey?

A. Yes, sir.

Q. How did you happen to meet him?

A. A Special Agent came to my house and said that the Assistant Superintendent, Mr. Parsons, wanted to see me. He come out there in his car and brcught me to town, in front of the Comer Building, and said it would be ir 1605 Comer Building.

Q. Where was Mr. Parsons' office at that time?

A. Second floor of the Superintendent's Building on Morris Avenue.

Q. On Morris Avenue?

A. Yes, sir.

Q. Is that three or four blocks from the Comer Building?

A. Yes, sir.

Q. When you got up there to Mr. Robey's office did you see Mr. Parsons?

A. No, sir.

Q. Did you ever see Mr. Parsons on that occasion?

A. No, sir.

Q. Did Mr. Robey talk to you about this case?

A. Yes, sir.

Q. Did he say he was employed by the L&N?

A. I wouldn't state for sure, but I believe he did.

Q. Did he tell you he was an ex-FBI man?

A No, he never stated that. never did make that statement to me.

Q. Mr. Chapman—

A. Yes, sir.

Q. —was there anyone that spent any of these nights out there with you, any other individual from any other crafts or any other firemen? I mean I am not asking the names, but were they out there or were you by yourself?

A. Well, of course, a place like that ordinarily there would be a big crowd maybe up until 12:00 or 1:00 o'clock. From about 1:00 or 1:30 approximately until daylight I wouldn't see a soul hardly.

Q. You would just stand out there?

A. Just be out there, right.

Q. Now, this Monday morning that they asked you to go, you say that this was a bunch of car men?

A. It was car men and I imagine some transportation men too, I don't know.

Q. Car men and transportation men?

A. Of course, out of a big bunch like this together, you can't put your finger on every one of them.

Q. They said that they wanted a fireman to go along into the Yards with them, is that right?

A. Yes, sir.

Q. Did you recognize any of that group, of course, other than yourself, as being a fireman?

A. No, sir.

Q. In other words, you were the only fireman in that group of 18 or 20 men?

A. Yes, sir.

Q. All they did was just go through the Yards and then come out?

A. Come out.

Q. Is that right?

A. Yes, sir.

Mr. Pettus:

That's all.

No. C12

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VOLUME II.

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,632

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Appellant,

versus

J. M. BROWN, JR., ET AL.,
Appellees.

Appeal from the United States District Court for the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 22 '57.)

Re-Direct Examination.

By Mr. Simpson:
Q. Did they say what they were going to do to anybody if they found them in there?

Mr. Pettus:
We object to that.

A No, sir, they just wanted—

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Simpson:
May Mr. Chapman be excused?

The Court:
Unless there is objection you may be excused.

Mr. Pettus:
We will excuse him.

(Witness excused.)

Mr. Simpson:
Tell Mr. Dougherty to come in.

ED DOUGHERTY, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Mr. Dougherty, state your name to the jury, please, sir.

A. Ed Dougherty, Edward, but everybody calls me Ed.

Q. Where do you live?

A. 6715 First Avenue South.

Q. How long have you lived in Birmingham?

A. All my life.

Q. Who do you work for?

A. L&N.

Q. How long have you worked for the L&N?

A. It's going on 36 years.

Q. What do you do?

A. Hostler helped until the job was cut out; labor now.

Q. You are still with the L&N?

A. Yes, sir, still with them.

Q. All right now, do you belong to one of the Railroad Brotherhoods?

A. Yes, sir.

Q. Which one?

A. Firemen.

Q. Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. Do you remember when the walkout occurred about the outside hostler helpers being cut off?

A. Yes, sir, I remember it.

Q. About, Sunday, some time in October?
A. October 23.
Q. 23rd of last October?
A. Yes, sir.
Q. Where were you on that Sunday night when that occurred?
A. Mr. McClendon and myself had been to the Yard to get an engine that didn't work on Sunday and bring it to the roundhouse.
Q. To bring it up to the roundhouse?
A. Yes, sir.
Q. When were you due to go back on duty?
A. Next day at 3:00 o'clock.
Q. You were on the second shift?
A. Second shift.
Q. Now then were you there around 9:00 o'clock that night?
A. No, sir.
Q. When the men went out?
A. We was in the Yard.
Q. You were inside of the Yard?
A. Down in the Yard.
Q. Down in the Yard?
A. South Train Yard.
Q. Did you come out of the Yard that night?
A. Yes, sir.
Q. What gate did you come out of?
A. I come out there by the, right back of the shack there, washroom, a little bridge across there.
Q. That is near the roundhouse?
A. Right below it, yes, sir.
Q. Right below the roundhouse?
A. Yes, sir.
Q. Who came out with you?
A. Well, there was two or three behind me, but I don't remember who they was.

Q. Now what time did you come out?

A. Something after 9:00 o'clock. It was 9:00 when we got down there. They was coming out when we got back to the washroom.

Q. When you got back to the washroom?

A. Yes, sir.

Q. Who did you see around there that Sunday night?

A. I didn't see anybody.

Q. You mean you don't remember who you saw?

A. No, sir.

Q. Now then did you have any conversation with one of these Defendants here, Mr. A. R. Thomas there?

A. Not that night, no, sir.

Q. I mean on Monday following, did you have a conversation with him out there?

A. Yes, sir.

Q. About what time was it that you had this conversation with Mr. Thomas?

A. About 8:30 that morning.

Q. On Monday morning?

A. On Monday morning.

Q. Where were you all when you were talking?

A. Right across from where the bus stops there in front of Rex's Barbecue.

Q. How long had you known Mr. A. R. Thomas?

A. Well, I have known him for years.

Q. That is the same as Reese Thomas, he is usually called, isn't it?

A. Yes, sir.

Q. What did he ask you?

A. Sir?

Q. What did he ask you to do, if anything?

A. He didn't ask me to do anything, only to—he had a paper, one of these Post-Heralds, and he said if anybody started in to let them read the paper.

Q. Where did he tell you to take up your post?

A. He didn't assign me to any post.

Q. Did you relieve anybody?

A. Him and Mr. McCutcheon was standing there talking.

Q. He and Mr. McCutcheon was standing at the entrance?

A. Yes, sir.

Q. What entrance was that?

A. Lower one.

Q. That is the little foot bridge?

A. Yes, sir.

Q. He and Mr. McCutcheon were standing at the foot bridge?

A. Yes, sir.

Q. Where you enter into the Yard?

A. On the side of the road, they wasn't exactly at it. You see that bus stops there and they were this way from the little bridge.

Q. About how far from the end of the little bridge?

A. Well, I would say about 15 or 20 feet, I guess.

Q. Now, he asked you to take up your place, your position there?

A. He didn't ask me to take anything, I come over there to help out what I could, help do what I could.

Q. You came over there as a fireman?

A. I volunteered mine.

Q. What?

A. I was a volunteer, nobody didn't ask me.

Q. You volunteered?

A. Yes, sir.

Q. Who did you relieve there on that job?

A. Him and Mr. McCutcheon was there together, and they left.

Q. They left when you took up the place?

A. Yes, sir.

Q. When you volunteered to take up that place?

A. Yes, sir.

Q. How long did you stay there?

A. I hung around there all day.

Q. Did Mr. Thomas tell you how long he wanted you to stay there?

A. No, sir, he didn't say.

Q. You stayed there during the day?

A. Yes, sir.

Q. When you left there that night did you go home?

A. Yes, sir.

Q. And spend the night?

A. I went straight home.

Q. What time did you get back there the next morning?

A. About 8:30.

Q. What did you do then?

A. I stayed out there around in front of Rex's Barbecue and on each side of the road, some over here, some over there, talked to the boys.

Q. You stayed around the entrance to the plant?

A. Yes, sir.

Q. To the powerhouse?

A. Yes, sir.

Q. Who did you find there when you got there that morning, standing there at the end of that walkway?

A. I don't remember anybody standing there.

Q. Do you remember Mr. Marler?

A. Yes, that's right.

Q. That's right. Now, you know Mr. Marler?

A. Yes, sir.

Q. He is a fireman, is that right?
A. Yes, sir.
Q. You found him standing there that morning when you got there?
A. Yes, sir.
Q. You took his place and he left?
A. Yes, sir.
Q. So if Mr. Marler was a picket there at the end of that walk you took his place there as a picket about 6:30 that morning, didn't you?
A. About 8:30.
Q. About 8:30?
A. Yes, sir.
Q. Was it that late?
A. Yes, sir.
Q. You stayed there all day?
A. Yes, sir, about all day.
Q. Now then, did you see Mr. McClendon around there that day?
A. Yes, sir.
Q. Did you see Mr. McCutcheon around there?
A. Yes, sir.
Q. Did you see anybody else that you can remember now?
A. I saw several of them around there.
Q. You saw Mr. Thomas there, didn't you?
A. Mr. Thomas?
Q. Reese Thomas.
A. Mr. Brown.
Q. J. M. Brown, Jr.?
A. Yes, sir.
Q. The Defendant here?
A. Yes, sir.
Q. Anybody else?
A. Mr. Anderson.

Q. Mr. Howard Anderson?

A. Yes, sir.

Q. And did you see anybody that—you know what whittling means, don't you, around these entrances to the Company's property?

A. Well, there was some of them was, I guess. I didn't have nothing to whittle on.

Q. You didn't whittle any?

A. No, sir, I didn't have nothing to whittle with.

Q. Now, when they get out their knives and go to whittling around these entrances—you know what I mean?

A. Yes, sir.

Q. You had seen that in other strikes there?

A. Yes, sir.

Q. Did you see some whittling going on around the entrance to the property there on this occasion?

A. I don't remember any whittling going on while I was over there.

Q. You didn't remember any whittling going on?

A. No, sir.

Q. You didn't see any whittling going on there on Tuesday when you relieved Mr. Marler there?

A. Well, Mr. Marler had a little piece of kindling up there I think.

Q. He had a little kindling?

A. Yes, sir.

Q. Was he working on the kindling with an open knife?

A. Yes, sir.

Q. And he was there to invite any people not to go in just like you were, wasn't he?

A. I imagine so.

Mr. Simpson:

You can have the witness.

The Court:
Are there any questions?

Mr. Pettus:
Just a moment, Your Honor.

Mr. Simpson:
One more question while he is waiting.

Q. While you were on duty there, after you relieved Mr. Marler, didn't some engineers come up there and say they wanted to go in and go to work?
A. No, sir, not while I was there. The engineers and everybody else was around over in front there, but no one didn't say they wanted to go in and go to work.
Q. The first day you got out there didn't some engineers come up there and ask you about letting them go in there and go to work?
A. Not that I remember.
Q. You can't remember that?
A. No, sir.
Q. All right.
A. If they had asked me I would have told them to went ahead.
Q. You would?
A. Yes, sir.
Q. You were not doing any whittling?
A. No, sir.

Mr. Simpson:
All right, that's all.

Mr. Pettus:
We will excuse Mr. Dougherty.

The Court:
All right, come down.

(Witness excused.)

Mr. Simpson:
Call Mr. Sexton. May Mr. Dougherty be excused from further attendance on the Court?

The Court:
Yes, sir. You are excused from further attendance, Mr. Dougherty.

E. L. SEXTON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Mr. Sexton, will you state your name to the jury, please, sir?
A. My name is E. L. Sexton.

Mr. Pettus:
I can't hear you.

The Witness:
E. L. Sexton.

Q. Where do you live?
A. I live at 4624 Avenue U, Birmingham 8, Alabama. That is out in the western part of Birmingham.
Q. That is Central Park, isn't it?

A. That is Central Park.

Q. How long have you lived in Birmingham?

A. Practically all my life, except about maybe say 8 years.

Q. Who do you work for?

A. L&N Railroad.

Q. How long have you worked for the L&N?

Mr. Pettus:

We can't hear him over here, may it please the Court.

Q. Pull your chair forward so these gentlemen can hear you.

A. I went to work September 20, I believe it was 1945.

Q. 1945?

A. Yes, sir, 11 years you might say.

Q. Yes. What sort of work do you do?

A. I am a fireman.

Q. A fireman?

A. Yes, sir.

Q. Now then do you recall this strike that occurred in October, 1955, on Sunday the 23rd of October?

A. Yes, sir.

Q. What was the first you heard about that strike?

A. What was the first that I heard?

Q. What was the first word you heard indicating the strike was coming?

A. I heard it rumored around for say four or five nights.

Q. Yes, sir.

A. That there was going to be a strike on a Monday.

Q. On Monday?

A. Yes, I believe that would be about the 24th.

Q. That's right.

A. Yes, sir.

Q. All right, did you hear any conversation particularly on Saturday morning before the strike on Sunday?

A. Well, yes, sir.

Q. About preparations for it in any way?

A. Well, yes, sir, there was general discussion back there you might say, among the men there for several nights.

Q. Did you hear any discussion in the bath house on Saturday morning about it?

A. Yes, sir.

Q. Who did you hear discussing it there?

A. A. R. Thomas.

Q. Mr. Reese Thomas?

A. Yes, and J. B. Otts.

Q. And J. B. Otts?

A. And McCutcheon.

Q. And McCutcheon?

A. Yes, sir.

Q. What was said there in the bath house on that Saturday morning about it?

A. They were discussing the plans of getting picket signs.

Q. Getting picket signs?

A. Getting picket signs, yes, sir.

Q. What did they say about it?

A. Well, they was wondering, it being the hour that it was, out there around approximately 2:30 or 3:00 o'clock Saturday morning, wondering whether or not they could get the picket signs in time to use for Monday.

Q. All right.

A. It being Saturday, you know, a lot of offices are closed in the afternoon.

Q. All right. Tell us as nearly as you remember what they said about it.

A. Well, to begin with they was undecided as to where they would get the picket sings. So one of them borrowed the telephone directory—

Mr. Pettus:

We object to "one of them", unless he identifies him.

Mr. Simpson:

They are all three Defendants in this case.

A. One of the group.

The Court:

Is it one of the three you are referring to?

The Witness:

Yes, sir, one of the three.

The Court:

All right, I overrule the objection.

Mr. Pettus:

We except.

A. Yes, sir, went to the Engine Dispatcher's Office and requested and got a telephone directory. And they looked through the yellow pages to get the names of the several sign companies, and telephone numbers, and things like that to call.

Q. All right. Did they discuss what was to be on the signs?

A. Yes, sir.

Q. What was said about that?

A. Mr. McCutcheon asked J. B. Otts what should be on the signs, what would you put on the signs. J. B. Otts taken a piece of paper and wrote out what he thought should be put on the signs. The signs should read "L&N Railroad Unfair to Hostler Helpers."

Q. All right, did anybody take that paper?

A. McCutcheon did.

Q. Mr. McCutcheon took the paper?

A. Yes, sir.

Q. Did they come to any conclusion there about what the sign painter, what sign painter they were going to?

A. No, sir.

Q. You don't know, after they looked through the yellow pages, who they decided to have do that?

A. No, sir.

Q. Did you ever talk to Mr. McCutcheon later on in the strike or after the strike about what happened to the signs?

A. Ask that question again.

Q. Did you ever discuss the signs with him, or hear Mr. McCutcheon say anything later about whether they got the signs or not, and who got them, and so forth?

A. Oh, yes, I asked McCutcheon the following night.

Q. That would be when?

A. We went to work on—now, you see the first discussion came up on an early Saturday morning.

Q. Yes, sir.

A. We went to work, for instance, Friday night at 11:00 o'clock.

Q. Yes, sir.

A. And then I asked him then after we went to work at 11:00 o'clock Saturday night if he got the signs.

Q. Yes, sir.

A. And he said "Yes."

Q. All right.

A. I didn't ask how many nor where they got them or anything about it.

Q. All right. Did he ever later tell you anything further about them, what they did with them?

A. Mr. McCutcheon didn't, no, sir.

Q. Did anybody else, any of the Defendants ever tell you later what happened to the signs?

A. Yes, sir.

Q. Who was that?

A. A. R. Thomas.

Q. Mr. Reese Thomas?

A. Yes, sir.

Q. What did he tell you?

A. He said he destroyed them to keep them from falling into the wrong hands.

Q. Did he say who he considered "wrong hands"?

A. No, sir, he didn't.

Q. He didn't explain that?

A. No, sir.

Q. Now then where were you about 9:00 o'clock Sunday night, at the time that strike went into effect?

A. Well, I was more than likely at home Sunday night.

Q. Did you come down to the Rex's Barbecue that Sunday night?

A. I did. I left home as usual Sunday night going to work, and I arrived at Rex's Barbecue I will say around approximately 10:30, 30 minutes before I was due to go on duty.

Q. About 30 minutes?

A. Yes, sir.

Q. You didn't know they had come out that night?

A. No, sir, I did not.

Q. When you got down there did you see anybody you knew around there?

A. Yes, sir.

Q. Around Rex's?

A. Yes, sir.

Q. Who did you see?

A. Well, I saw a lot of men that I knew. I talked to several. They was some of the men that work out there. I recognized their faces, I couldn't tell you their names, but I do remember certain men that I talked to, and I remember seeing other faces out there.

Q. Tell us those that you can now remember.

A. What ones of the men that I actually talked to?

Q. Yes, sir.

A. Well, I believe I first talked to, in fact I know I talked to McCutcheon.

Q. Mr. McCutcheon, the Defendant here?

A. I also talked to H. K. Parker.

Q. The Defendant here, H. K. Parker?

A. Yes, sir, Shorty Parker.

Q. Yes. Who else do you remember having talked to?

A. Well, as far as just holding a conversation with an individual there, they were about the only two that I held you might say a conversation with. Well, I did hold a conversation with an electrician, Jimmy Zuiderhoek.

Q. Zuiderhoek?

A. Yes, sir, but so far as talking with the other fellows, I was just mingling in the crowds, talking to first one and then another, but I do remember them specifically.

Q. Now, you had a conversation you say with Mr. McCutcheon, the Defendant?

A. Yes, sir.

Q. What was said between you all?

A. Well, when I walked up to McCutcheon he was standing between the road or highway, whatever you want to call it, and the bridge which we travel going from Rex's Barbecue up to this bath house.

Q. Yes, sir.

A. He was standing there alone.

Q Alone?

A. Yes, sir.

Q. At the end of that bridge?

A. Yes, sir, at the time.

Q. You got to talking with him?

A. Yes, sir, at the time.

Q. You got to talking with him?

A. Yes, sir, I had a talk with him.

Q. Now, what was that conversation?

A. Well, the first thing I asked him, I says "McCutcheon, I thought you fellows was going to strike Monday." He said "Well, the boys decided to pull it today."

Q. Decided they would pull it today?

A. Yes, the boys wanted to pull it today.

Q. This was on Sunday night about 10:30 p. m?

A Yes, somewhere around there, maybe 11:00 o'clock.

Q. You were not at the meeting at Shorty Parker's that afternoon about 4:30, were you?

A. I was not, no, sir.

Q. Did Mr. McCuthceon tell you whether or not they decided up there at Shorty Parker's to pull it that night, or did he tell you where they decided that?

A. I wouldn't say that he told me that it was decided there, but that was the plans, to go to Shorty Parker's.

Mr. Pettus:

We object to what the plans were, and move to exclude that.

The Court:

I sustain the objection.

Mr. Pettus:

That voluntary statement.

The Court:

I sustain the objection.

Q. Had you heard any preliminary discussion about the meeting at Shorty Parker's that afternoon?

A. Yes, sir.

Q. Who had you heard discussing that?

A. McCutcheon and A. R. Thomas.

Q McCutcheon and Reese Thomas?

A. Yes, sir.

Q. And you knew that they did have a meeting up there that afternoon?

A. Well, now—

Q. Or you knew that they planned to have one?

A. I knew they planned to have one, yes, sir.

Q. Now then did you go on in when you found Mr. McCutcheon standing there at the end of the little bridge?

A No, sir.

Q. Did you go on in the Yard?

A. No, sir.

Q. Did you turn back?

A. Yes, sir, after I stood there and talked with him

Q. All right. Now you say you had a talk that night also with Reese Thomas?

A. Sunday night?

Q. Yes. Did you?

A. No, sir.

Q You said Shorty Parker, didn't you?

A I talked to Shorty Parker.

Q. What did Shorty Parker and you say?

A. When I walked in the cafe Shorty was sitting on the stool, and Shorty asked me, says "Well, Sexton, what do you think about the situation?" I said "You want to know what I think about it?" He says "Yes." I said "I think you are a bunch of fools."

Q. What did he say to that?

A. He says "Why do you say that?" I said "Well, it's a wildcat strike, it's not authorized by the Brotherhood, and the Company about tomorrow or within the next day or two if it isn't settled will go down to the Courthouse and get an injunction, and we will be forced to go back to work, and we'll go back to work without any hostler helpers."

Q. What did Mr. Parker say to that?

A. He says "Well, you may be right."

Q. I see. Now then, do you know Mr. Baum here, one of the Defendants?

A. Yes, sir, I know Mr. Baum.

Q. Did Mr. Baum say anything to you that night?

A. Yes, sir

Q Tell us about what time of night that was.

A. Well, I would say it was probably after 11:00 o'clock.

Q. Where were you when Mr. Baum talked to you?

A. Jimmy Zuiderhoek and I were standing off kind of out to ourselves talking about the situation, and Baum walked up to me and says "Sexton", says "I want you to go up to the Master Mechanic's Office and do picket duty tonight." I said "Mr. Baum"—no, I didn't say "Mr. Baum", I said "Well, Baum, what are you going to do?" He said "Well, I haven't had any sleep today, and I am going home and sleep a while, I'll be up there in the morning." I says "Well, for your information, I slept some today, but I am going back home and go to bed tonight now in a little while."

Q. Where was the place that you understood that Baum wanted you to go on duty as a picket?

A. Up at the gate.

Q. What gate?

A. Near the Master Mechanic's Office.

Q. The Master Mechanic's gate?

A. Yes, sir.

Q. That's the one in the middle between the powerhouse and the roundhouse gate, is it, the Master Mechanic's gate?

A. You turn off from I believe Vanderbilt Road about, oh, a block, then you get to the Master Mechanic's Office.

Q. The Master Mechanic's Office?

A. Yes, sir.

Q. That is where he wanted you to go on picket duty that night?

A. That's what he said.

Q. And you declined to do it?

A. Yes, sir.

Q. Did you hear any conversation between Bruce Barnett and Mr. Anderson. Howard Anderson on that Sunday night?

A. I didn't talk with them, but I heard, as they went around through mingling with the men and among the men, that they wanted to get up a gang and go to Oakworth and shut Oakworth down.

Q. Now these gentlemen don't know where Oakworth is?

The Court:

Go where?

The Witness:

Oakworth, in other words, that is the name of the Yard at Decatur, Alabama.

Q. Oakworth is what you call the Decatur Yards?

A. Yes, sir.

Q. Who were these two men?

A. Sir?

Q. Who were the two men that were going to do that?

A. Bruce Barnett and H. E. Anderson.

Q. They were going to get up a gang to go up there?

A. Yes, sir.

Q. When were they going up there?

A. They wanted to leave just as soon as they could get the gang together.

Q. That was on the same Sunday night?

A. Sunday night, yes, sir.

Q. Go up there and close that up?

A. Yes, sir.

Q. Well, do you know whether anybody volunteered to help them do that?

A. No, sir, I wouldn't know.

Q. Was that around Rex's Barbecue place where they were trying to get up that gang?

A. Yes, sir.

Q. Do you know when they actually got the gang up and went to Decatur?

A. No, sir, I do not.

Q. You do not know about that?

A. No, sir.

Q. Did you have any telephone conversation on Tuesday afternoon about what was going on with anybody up at Rex's Barbecue?

A. I had a conversation with someone I would say around Tuesday afternoon.

Q. Did he identify himself over the telephone?

A. Yes, sir.

Q. Who did he say he was?

A. H. D. Dismukes.

Mr. Pettus:

We object to that.

Q. Do you know Mr. Dismukes?

Mr. Pettus:

We object to that telephone identification without recognizing the voice.

The Court:

Well, he would have to identify his voice if he can.

Q. Do you know Mr. Dismukes?

A. Yes, sir.

Q. How long have you known him?

A. About 11 years, ever since I have been working for the L&N.

Q. You talked to a man who said he was Mr. Dismukes?

A. Yes, sir.

Q. In your best judgment was the voice that of Mr. Dismukes?

A. Yes, sir.

Q. That is your best judgment about it?

A. Yes, sir.

Q. Where did you get him on the phone?

A. I called Rex's Barbecue, and I called for J. B. Otts, I asked the lady that answered the phone if J. B. Otts was around.

Q. All right.

A. There was a minute or two elapsed, and she said there wasn't anyone around. So I asked her if there was any firemen around. She said "Wait a minute."

So then the next voice I heard was somebody said "Hello" and I asked who it was, and he identified himself, he said "This is H. D. Dismukes."

Q. Then did you have a conversation with Mr. Dismukes?

A. I asked him what the situation looked like, if it looked like that there was any settlement in sight.

Q. What did he say?

A. He said he didn't really know; he just had come in from Montgomery. He said "I have shut Montgomery down", and he said "I don't know too much about what is going on here."

Mr. Pettus:
We move to exclude that, may it please the Court, not binding on any Defendant in the case; Mr. Dismukes is not a Defendant; hearsay.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. And did you ask him how he had shut Montgomery down?
A. No, sir, I didn't, I don't think I asked him any questions.
Q. You didn't go into details?
A. No, sir.
Q. Now, that was when?
A. Sir?
Q. When did this conversation happen?
A. Tuesday afternoon.
Q. Tuesday afternoon?
A. Yes, sir.
Q. You didn't ask him when or how he shut Montgomery down?
A. No, sir.

The Court:
I am admitting that on the theory that you will connect Dismukes up with the alleged conspiracy that is charged here.

Mr. Simpson:
We will, Your Honor.

The Court:
It is my understanding of the law that a person does not have to be a party to be a co-conspirator.

Mr. Simpson:
You don't have to sue all the conspirators?

The Court:
No, that's right, but you do have to connect the matter up, connect his acts up in some way.

Mr. Simpson:
All right.

Q. Now, Mr. Dismukes was a fireman, was he?
A. He was a fireman, a promoted fireman.

Mr. Pettus:
We can't hear you.

The Witness:
He is a fireman, performing fireman's duties now, but he is a promoted man, which is an engineer.

Q. He has been promoted to engineer?
A. Yes, he has been, yes, sir.
Q. Do you know whether or not Mr. Dismukes at that time was a member of the Firemen?
A. No, sir, I wouldn't know.
Q. You don't know about that?
A. No, sir.
Q. Did you ever have any conversation about picket duty with Mr. Breedlove?
A. Yes, sir.
Q. Do you remember about when that occurred?

A. Now, wait a minute, the conversation that I had with Breedlove was on the telephone.

Q. All right.

A. Not out in the open.

Mr. Pettus:

We object to that.

Q. Did you recognize his voice?

Mr. Pettus:

No recognition of the voice.

Q. Did you recognize Mr. Breedlove over the telephone?

The Court:

Overruled.

Mr. Pettus:

We except.

Q. His voice?

A. Yes, sir.

Q. Did he identify himself as Mr. Breedlove?

A. Yes, sir.

Q. How long have you known Mr. Breedlove?

A. Well, I would say 11 years; ever since I have been working for the L&N Railroad.

Q. In your best judgment was that the voice of Mr. Breedlove?

Mr. Pettus:

I can't hear him, Judge.

The Court:
Speak out, Mr. Sexton.

Q. In your best judgment was the voice that of Mr. Breedlove that you talked to?
A. Yes, sir.
Q. Just tell us what was said between you and Mr. Breedlove on that Wednesday afternoon? I believe it was Wednesday afternoon, wasn't it?
A. No, sir, it was Wednesday morning that I called.
Q. Wednesday morning?
A. Yes, sir.
Q. What was said between you at that time? Now, you are leaning back, and these gentlemen will complain they can't hear you.
A. Well, I called Mr. Breedlove. In other words, Breedlove called for me Monday night and Tuesday night. My telephone I had placed on what you call a vacation plan, due to my mother's illness, and I had the Telephone Company to take another telephone number, which was my mother-in-law's, and refer all emergency calls, or should the call office want to get hold of me. any time my phone number was dialed, the operator would come in and tell them that phone was discontinued, and refer them to this other number.
Q. All right.
A. So Tuesday morning I went down to my mother's house—my mother-in-law's house, and she informed me that a fellow by the name of Breedlove, she had it wrote down on a piece of paper, and the telephone number, said to call him, that it was important. I told her I wasn't going to call him.
So Wednesday morning I went back down there, and she let me know that Mr. Breedlove had called

her again. He had called several times up until 11:00 and 12:00 o'clock that night.

So, to put a stop to that, having him disturbing my wife's mother, I called him Wednesday morning.

Mr. Pettus:

We object to that voluntary statement of this witness.

Mr. Simpson:

I don't insist on that.

Mr. Pettus:

I move to exclude it.

The Court:

I will exclude that, gentlemen.

Q. You did call Mr. Breedlove?

A. I called him Wednesday morning, yes, sir.

Q. All right, now, when you got on the telephone what was the conversation?

A. When he answered his telephone I asked him if this was O. C. Breedlove, and he said "Yep." I said "This is Sexton." He said "E. L.?" I said "Yep", I said "What do you want?" He says "I want you out here on the picket line to let these boys, fellows, know that we are on a strike." I says "I am not on strike.' He says "You are not working, are you?" I says "No, I'm not working." He says "Well, what are you doing?" I said "That's my own personal business as to what I'm doing."

I told him that I had already told J. B. Otts that I wasn't taking orders from him and Baum to do picket duty, or anybody else, and I was letting him know that I wasn't taking orders from him.

Q. All right.

A. That I didn't intend to do any picket duty.

Q. All right.

A. So he informed me that he had the credentials giving him full authority to assign all the pickets, and if I decided to call him, if I changed my mind to call him about the picket duty. So I told him then that I wasn't going to call him, as I was not going on picket duty.

Q. All right. Were you at one time an official of the Firemen's Union?

A. Yes, sir.

Q. How long?

A. For approximately a year and a half to two years. I served as Local Chairman.

Q. You served as Local Chairman?

A. Of the Firemen.

Q. That is the man that handles the grievances, and things of that kind for the Firemen's Union, for a year and a half?

A. Yes, sir.

Q. How long ago was that?

A. I resigned, but I just don't know what year it was. It has been say 3, maybe 4 years.

Q. 3 or 4 years ago?

A. Yes, sir.

Mr. Simpson:

All right, you may have the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Sexton, I hand you herewith Defendants' Exhibit 1 and ask you, for identification, and ask you

if you have ever seen that paper before, or one like it?

A. I have seen one like it, yes, sir.

Q. You have seen one like it?

A. Yes, sir.

Q. When did you see it?

A. I will say just a few days before the strike was pulled.

Q. This is dated October 19, 1955. Did you see it about October 19, 1955?

A. I'll say around the 19th or 20th, something like that.

Q. About the 19th or 20th?

A. Yes, sir.

Q. Now, after that notice was put up on the bulletin board—do you work out at the Boyles Yard?

A. Yes, sir.

Q. As soon as that notice was put up you began to hear rumors of a strike, didn't you, or walkout?

A. Yes, sir.

Q. And there was general dissatisfaction with the abolishment of those hostler helpers jobs, wouldn't you say, out there, wasn't there?

A. Yes, sir.

Q. There was a lot of talk about it?

A. Yes, sir.

Q. Did you hear anybody say that—are you a fireman?

A. Yes, sir, I am a fireman, but at that time I was—I am also a hostler, and I was performing hostler duties.

Q. At that time you were performing hostler duties yourself, were you?

A. Yes, sir.

Q. What is your seniority date, Mr. Sexton?

A. I believe it is September 20, 1945.

Q. September 20, 1945?

A. Yes, sir.

Q. All of these men Dougherty, from 1922, Grissom, 1925, and McCutcheon, 1941, out ranked you in seniority, didn't they?

A. Yes, sir.

Q. Did you hear in the general discussion after that notice was put up that if they could abolish the hostler helpers' job they could abolish the firemen's job?

A. No, sir, I don't know that I heard that discussion.

Q. You didn't hear about that?

A. No, sir.

Q. Did you think about that yourself?

A. No, sir, I didn't.

Q. Now, did you ever see any signs yourself during the course of this walkout?

A. I did not see any signs, no, sir.

Q. You didn't see a single sign?

A. I did not.

Q. Are you a member of the Firemen's Organization?

A. Yes, sir, and I have been since 1944 continuously.

Q. Continuously; you joined in '44?

A. I say continuously since 1944.

Q. Continuously since 1944?

A. Yes, sir.

Q. Will you speak up loud? I want everybody to be able to hear you here.

A. Yes, sir.

Q. In this discussion that you say took place at the bath house on the evening of October 24 did you

take part in that discussion, did you make a suggestion or two, with Mr. Thomas and Mr. Otts?

A. You say on the 24th?

Q. On the—when was the discussion?

A. Do you have reference to the night that they were talking about the—

Q. Signs.

A. —signs?

Q. Yes, sir. When was that? When did that take place?

A. That was Saturday morning around, I will say around 2:30 or 3:30 a. m.

Q. A. M.?

A. Yes, sir.

Q. It was in the morning?

A. Yes, sir.

Q. Was there anybody there besides you, Thomas, Otts, and McCutcheon?

A. No, sir.

Q. You all were just in the bath house there together?

A. Yes, sir, that's right, in the bath house.

Q. Did you enter that discussion with them?

A. I stood around with them.

Q. You just stood around with them?

A. Yes, sir.

Q. Did you make any suggestions yourself?

A. No, sir, I did not.

Q. Did you take any part in it?

A. No, sir, I did not.

Q. Did you go in—where was the telephone book that you mentioned?

A. The bath house and the Engine Dispatcher's Office you might say is in the same building, but there is a partition. One corner is partitioned off in the Engine Dispatcher's Office.

Q. Are you certain of the exact time that this took place?

A. Well, it was a good long while after we went to work. We went to work at 11:00 o'clock that night, at 11:00 p. m.

Q. You went to work at 11:00 p. m.?

A. It was actually Friday night.

Q. Actually Friday night?

A. When we went to work, yes, sir.

Q. You were still on that shift, is that correct?

A. Yes, sir.

Q. But you never personally saw any signs?

A. I did not see any signs.

Q. During the entire course of the walkout?

A. I did not.

Q. You were at the Yards, or you did approach the Yards there during the walkout, did you?

A. Sunday night, yes, sir.

Q. On Sunday night?

A. Yes, sir.

Q. You didn't see any signs there then?

A. I did not.

Q. Did you see any Monday?

A. No, sir, because when I left there that Sunday night I did not go back out to Boyles until the night after the strike was settled.

Q. That is on Thursday night?

A. The strike was settled Wednesday night and they failed to get hold of me, and I reported Thursday and went to work Thursday night.

Q. So you were not at the Yard from Sunday night until you returned on Thursday night?

A. That's right.

Q. Did you lay off?

A. No, sir. I didn't lay off.

Q. Did you have a job that was supposed to go on on Wednesday night?

A. After it was settled, yes.

Q. Yes, sir. Did you go on the job Wednesday night?

A. No, sir.

Q. You didn't go on the job until Thursday night?

A. I went on the job Thursday night.

Q. When you went out there that evening, that is on Sunday evening, and talked to Mr. McCutcheon was just the two of you standing out there in the road?

A. You mean Sunday night?

Q. Yes, sir.

A. Yes, sir.

Q. That is on the public road there?

A. Well, we was off of the road, standing between the highway and the bridge, iittle wooden bridge that the Company has put up there for us to walk on.

Q. Were there just the two of you there?

A. Yes, sir.

Q. Was there anybody else there?

A. Not at the time, no, sir.

Q. Who had mentioned the rumors to you of a possible strike? You said that for four or five days before that there was talk of a possible strike or walkout. Just tell us who it was who mentioned that to you?

A. Who mentioned that?

Q. Yes; five days before, you said. Who was the first one that mentioned a possible strike or walkout?

A. It was a general rumor.

Q. It was a general rumor, wasn't it?

A. By all the men, yes, sir.

Q. It was among all the men?

A. Yes, sir.

Q. It was not confined to the firemen, but it was talked among the car men and the switchmen and everybody out there, wasn't it?

A. Well, yes, sir, they all were talking about it.

Q. They were all talking about it?

A. Yes, sir.

Q. Did you go at all downtown to any part of the Company's offices or anything downtown during the course of the strike?

A. No, sir.

Q. When you walked out to talk to McCutcheon did he mention anything to you in regard to going on Company property, or not going on Company property?

A. No, sir.

Q. Do you know Mr. Phillips, a switchman?

A. I may know his face. I don't know him by name.

Q. You were supposed to go on the 11:00 o'clock shift?

A. As a hostler, yes, sir.

Q. Do you know that he just wandered onto the Company property without knowing anything was not running at that time?

A. Mr. Phillips did?

Q. Yes, sir.

A. No, I wouldn't know about that.

Q. Do you know anybody else that just wandered on without knowing anything was going on?

A. No, sir.

The Court:

Gentlemen, we are going to take a recess at this time, 20 minute recess.

(A short recess was had.)

Q. What time did you get down to the Rex's Cafe Sunday night, October 23?

A. Around 10:30.

Q. Were you in your street clothes?

A. No, sir, I was in my work clothes.

Q. In your work clothes?

A. Yes, sir.

Q. How long did you stay there?

A. I stayed around I'll say around until midnight.

Q. You stayed there until around midnight?

A. Somewheres around there.

Q. In other words, you were there about an hour and a half, is that right?

A. Yes, sir.

Q. Where was it you saw Mr. Parker while you were there?

A. Inside of the cafe.

Q. Inside of Rex's Cafe?

A. Yes, sir.

Q. Where was he standing?

A. He was not standing, he was sitting on the stool.

Q. He was sitting on the stool?

A. Yes, sir.

Q. Did you go up and sit on the stool by him?

A. No, sir, I did not.

Q. You just stood there by him?

A. Stood there by the side of him.

Q. As a matter of fact, isn't it true that that is also where you saw McCutcheon, he was inside of the cafe?

A. No, sir, he was not.

Q. As a matter of fact, you did not see him outside of the cafe, did you?

A. I saw him outside of the cafe.

Q. You never did see him inside of the cafe?

A. I don't recall it, no, sir.
Q. You don't recall about that?
A. No, sir.
Q. Now, how about Mr. Baum, where did you see him?
A. Outside of the cafe.
Q. Outside of the cafe too?
A. Yes, sir.
Q. Now, who was with you when you saw Mr. Baum?
A. Who was with me?
Q. Yes.
A. Jimmy Zuiderhoek, an electrician.
Q. The two of you were together?
A. Yes, sir.
Q. Was Mr. Zuiderhoek with you at all times that there was any conversation between you and Baum?
A. Yes, sir.
Q. And there was a conversation between you and Baum?
A. Yes, sir.
Q. You don't like Mr. Baum, do you?
A. I'm not in love with him.
Q. In fact you have got a little grudge against him, haven't you?
A. No, sir, I wouldn't say that, no, sir.
Q. Going back to the day—weren't you Local Chairman of the Firemen at the time?
A. I was, yes, sir.
Q. At that time didn't you have a little disagreement with Mr. Baum?
A. No, sir, he had one with me.
Q. Well, there was a disagreement between you, wasn't there?
A. That's right.

Q. The two of you are not too friendly even to this day, are you?

A. We never have been.

Q. Never have been?

A. Never have been buddies.

Q. In other words, there is no difference, you just feel the same way you always have, you don't like him, is that right?

A. Well, he and I worked on the Southern together, and we didn't even associate on the Southern together.

Q. Then it goes back that far?

A. That's right.

Q. All right. How about Mr. Bruce Barnett and Mr. Howard E. Anderson; where did you see them on that evening?

A. On the outside of the cafe, first one side of the road, and then another.

Q. First one side of the road, and then another?

A. Yes, sir.

Q. You didn't see them inside of the cafe?

A. I don't remember seeing them inside of the cafe, no, sir.

Q. You were not in any position there to hold any conversation with them, were you?

A. I did not hold a conversation with them.

Q. You did not hold a conversation with them?

A. No, sir.

Q. Isn't it a fact that you never saw either one of them that evening outside of an automobile, on the outside of an automobile?

A. Ask me that question again.

Q. Isn't it a fact that you never saw either one of them outside of an automobile?

A. No, sir, that's not a fact.

Q. In other words, you saw them when they were both outside of an automobile?

A. Yes, sir.

Q. When you saw them?

A. Yes, sir

Q. Did you see either one of them in an automobile that evening?

A. No, sir.

Q. You never saw them in an automobile?

A. No, sir.

Q. How long ago was it that you were Local Chairman of the Firemen?

A. I'll say around 3 or 4 years.

Q. 3 or 4 years?

A. I believe it was. I don't know what year, but I'll say 3 or 4 years.

Q. 3 or 4?

A. Yes, sir.

Q. And you resigned as Local Chairman, is that right?

A. I resigned, yes, sir.

Q. You resigned in mid-term?

A. Yes, sir.

Q. Before you served out your term?

A. Sir?

Q. Before you served out your term.

A. Yes, sir, I resigned due to the fact that I was cut off and no longer working out there.

Q. No longer working out there?

A. No, sir.

Q. You hadn't had any more disagreement with any of the other firemen at that time, had you?

A. No, sir.

Q. On this evening, and on the Saturday evening before, where you testified to this conversation that

you overheard between Mr. Thomas and Mr. Otts and Mr. McCutcheon, at that time these men were all firemen, weren't they? That is Mr. Thomas and Mr. McCutcheon and Mr. Otts, they were all members of the Firemen's Organization?

A. I couldn't say that they were, I don't know.

Q. They talked perfectly freely before you?

A. Oh, yes.

Q. Didn't they?

A. Yes, sir.

Q. When you walked up, nobody just sort of eased off, did they?

A. No, sir, they freely talked.

Q. At that time they all talked right before you?

A. That's right.

Q. They didn't hold back anything?

A. That's right.

Q. On the night of Sunday night there when you testified to overhearing some conversation with Bruce Barnett, he was not talking to you, was he?

A. Not directly, he was just in the crowd.

Q. In the crowd?

A. Yes, sir.

Q. You just overheard his conversation?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. How about Howard Anderson?

A. It was the same.

Q. It was the same?

A. Yes, sir.

Q. They were not talking to you?

A. Not directly, no, sir.

Q. But you were in the vicinity?

A. Yes, sir.

Q. How many people were in that vicinity?

A. Well, there was a large crowd. I wouldn't hardly know just hardly how to estimate it. I guess at times there was maybe a hundred men out there, that is including—

Q. Were all of them within earshot of Bruce Barnett and Howard Anderson?

A. No, not all the time.

Q. That's what I am talking about.

A. There is a large area there.

Q. Now, in this conversation that you testified to about Bruce Barnett and Howard Anderson, tell us the name of other men, every man that was standing as close as you were to either one of them at the time they were talking? Just give us their names.

A. I don't know of any particular man that he was talking to, to say he talked to.

Q. You don't know of any particular one?

A. No, sir.

Q. I am just asking you, you say other people were standing around, and I want you to name them?

A. Well, there was a large group of men there.

Q. I want to know.

A. I wouldn't attempt to name all of the men that were out there.

Q. They were mostly L&N employees?

A. Yes, sir.

Q. And there were switchmen and firemen, non-operating employees all out there together, weren't there?

A. Yes, sir.

Q. I am asking you at the time you testified as to this conversation that you overheard of Bruce Barnett, tell us some one else that was there that heard it?

A. Well, I'm not going to vouch for anybody else hearing it.

Q. Tell us somebody that was standing as close to Bruce Barnett as you were when Bruce Barnett was talking.

A. All of the men out there was about as near as I was, there. I am not going to call any names.

Q. You say a hundred men were standing just as close as you were, is that right?

A. I am not going to name any man that heard the conversation.

Q. I am not asking you to name any man that heard the conversation.

A. I'm telling you that.

Q. I am asking you to name one man, just one man—you remember Bruce Barnett was there, don't you?

A. Sure, I know he was there.

Q. All right, now, name one other man that was standing as close to Bruce Barnett as you were.

A. Well, so far as standing near Bruce Barnett is concerned, I didn't say that I was standing near him. They come up to Bruce, men that was there, standing around promiscuously.

Q. How far were you away from Mr. Barnett?

A. I didn't measure it.

Q. I want to know, give us your judgment; you have some judgment about it.

A. Well, they was just mingling in the crowd.

Q. Just mingling in the crowd?

A. Yes.

Q. How close did they get to you when they were mingling?

A. Well, I didn't shake hands with him.

Q. You didn't shake hands with him?

A. No, sir.

Q. You didn't get any closer than 10 feet to either one of them, did you?

A. I probably could have shaken hands with them, but I didn't.

Q. How close did you get to them? That's what I am asking you?

A. I didn't measure it.

Q. Were they talking when you were that close to them?

A. I heard them talking.

Q. You heard them talking?

A. Yes, sir.

Q. Who else was standing as close as you were to them when you heard them talking?

A. Well, I'll tell you, I didn't make no note of what was going on out there that night.

Q. Well, you made notes of their name, didn't you? And you came up and told this FBI man Robey about it, didn't you?

A. I know them, I recognized them.

Q. You recognized other people out there too, didn't you?

A. There was a lot of people out there that I recognized their faces.

Q. Well, call some names besides Barnett and Anderson that you recognized right when they were talking. Can you do it?

A. The whole group of men were out there.

Q. You have told us there were a hundred men. And you have named two of them.

A. I am not going to swear to anybody hearing the conversation. It was rumored around there, everybody was talking.

Q. I am not asking about rumors, I want to get what you heard. And I want the name of some one else that was standing where you were when you heard it.

A. I am not going to swear that anybody heard it. I don't know it to be a fact.

Q. Now, in this conversation that you claim to have had with Breedlove, did you say that you were not taking any orders from Otts and Baum? In your direct examination, was that what you said, from Otts and Baum, or from Breedlove and Baum? Which one was it?

A. I told him I wasn't taking orders from—I told him I had already told Otts that I wasn't taking picket orders from Baum and him; and I also wasn't taking orders from Mr. Breedlove.

Q. You were not taking orders from Breedlove?

A. No, sir.

Q. Now, Mr. Sexton, every firemen that is a Defendant in this case ranks you in seniority on the Railroad, don't they?

A. No, sir.

Q. Not more than one or two or three?

A. There is not all of them, no, sir.

Q. There are about three that don't rank you, and the rest of them rank you, is that right?

A. I believe there is one that is younger on the seniority list than I am.

Q. Have you heard the expression "Seniority hungry"? Do you know what that means?

A. Yes, sir, I know what that means.

Q. Have you heard it applied to yourself?

A. I have.

Q. You have, haven't you?

A. Yes, sir.

Q. Didn't you make the statement in December to a man named Hobson that if there was any way to get Breedlove in this case you were going to do it?

A. No, sir, I don't remember that.

Q. Did you make that statement to anybody?

A. I don't remember it.

Q. You don't remember making it?

A. No, sir.

Q. At that time Breedlove was not in the case, was he?

A. I don't know.

Q. I will ask you if you didn't make the statement last week in the Rex's Cafe while you were eating out there, at the time that Baum was present, that you would like to see all of these men in this case thrown out? That is last week now. Do you recall that?

A. Be thrown out of what?

Q. Thrown out of the Railroad, you know what I mean.

A. No, sir, I didn't make no such remark as that.

Q. You didn't make that remark?

A. No, sir.

Q. Did you call Ben Mitchell Sunday afternoon at 2:00 o'clock, October 23?

A. No, sir, I did not. I have never called Ben Mitchell.

Q. You never have?

A. Never.

Q. Were you the one that called Woelde at 4:00 o'clock?

A. I have never called Woelde.

Q. Never called either one of them?

A. No, sir.

Q. Have you ever made any anonymous telephone calls?

A. No, sir.

Q. To any railroad officials on the L&N?

A. No, sir, I haven't.

Mr. Pettus:

That's all.

Mr. Simpson:

That's all. Thank you, sir.

The Court:

Come down. Do you have any further use for this witness?

Mr. Simpson:

We would like to ask he be excused, Your Honor.

The Court:

Unless there is objection he will be excused.

Mr. Pettus:

We excuse him, Your Honor.

The Court:

You are excused.

(Witness excused.)

Mr. Simpson:

Call Mr. Petty.

We are having to put this witness on out of order because of the same trouble we had yesterday at the Decatur office. There are only two men up there that

can handle the job he is on. We want to get him here today and the other man tomorrow.

The Court:
All right.

R. H. PETTY, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you state your name to the jury, please, sir?
A. R. H. Petty.

Mr. Pettus:
What are his initials, Mr. Simpson?

Mr. Simpson:
R. H.

Q. Robert Henry Petty, is that right?
A. That's right.
Q. Where do you live?
A. Decatur.
Q. How long have you lived at Decatur?
A. All my life.
Q. Who do you work for?
A. L&N.
Q. You'd better talk out a little louder. I am afraid these gentlemen can't hear you.
A. L&N Railroad.
Q. L&N Railroad?

A. Yes, sir.

Q. And what is your job now, and what was it last October with the L&N Railroad?

A. Chief Clerk in the Freight Office.

Q. At Decatur?

A. Yes, sir.

Q. Do you recall the wildcat strike that occurred last October here at Boyles?

Mr. Pettus:

Your Honor, we object to that terminology.

Mr. Simpson:

Well, that's what your own Brotherhood men call it.

The Court:

I sustain the objection; work stoppage or whatever you want to call it.

Mr. Simpson:

Whatever they want me to call it. I am trying to comply with their own terminology.

Q. What sort of a strike was it? I mean do you recall the strike or work stoppage that occurred last fall?

A. Yes, sir.

Q. In October?

A. Yes, sir.

Q. Do you know what day it started here at Birmingham?

A. No, sir.

Q. At Boyles?

A. No. It was Sunday I understand.

Q. All right. Now, did you see anybody from Birmingham in Decatur on Monday?

A. Yes, sir.

Q. About what time did they get there?

A. About 4:00 o'clock or a little after.

Q. About 4:00 o'clock in the afternoon?

A. Yes, sir, that's right.

Q. Were you on duty at the time?

A. Yes, sir.

Q. And your office is in the front office, is it not?

A. That's right.

Q. That is in downtown Decatur?

A. Yes, sir.

Q. Who else was in the office there at that time, so far as you recall?

A. The whole office force.

Q. About how many of you were there?

A. There were six?

Q. Give us the names of those you remember.

A. Mr. Smith, Mr. Long.

Q. Was Mr. Smith, was he down here yesterday?

A. Yes, sir.

Q. You don't, of course, know whether he testified yesterday before these gentlemen, but Mr. Smith was in your office at that time?

A. Yes, sir.

Q. And Mr. Long?

A. And Mr. Long.

Q. Who else?

A. Mr. Ulrey.

Q. Mr. Ulrey?

A. Yes, sir.

Q. You are going to have to speak out louder, these gentlemen are not going to hear what you say.

A. Mr. Butler.

Q. Mr. Butler?

A. Yes, sir, and Edwards.

Q. Mr. Edwards?

A. Yes, sir.

Q. When these men came in there at 4:00 o'clock, or about 4:00 o'clock, or a little after, on Monday afternoon, how many of them were there?

A. Two or three.

Q. Where did you first see them?

A. Up in the front of the office.

Q. How far was that from your desk?

A. About 20 feet.

Q. When they came in, did they say anything?

A. Yes.

Q. What did they say?

A. They said they had closed up everything in Birmingham, and they had closed up the Yard Office, and had come up to close up the Freight Office.

Q. Had closed up the Yard Office where?

A. At Decatur.

Q. And now they had come over to the Freight Office?

A. That's right.

Q. To close it up?

A. That's right.

Q. Who did they address themselves to? Who did they address that to?

A. Well, everybody in general I imagine.

Q. Was it loud enough for you to hear it?

A. Yes, I heard it.

Q. You heard it?

A. Yes.

Q. Was there anybody in the office further away from them than you were?

A. Yes, sir.

Q. Do you know whether or not it was loud enough to be heard over the whole office?

A. Yes, they all heard it.

Q. They all heard it?

A. Yes.

Q. Did you go on out then?

A. No, sir.

Q. Had you intended to go out on strike?

Mr. Pettus:

We object to what he intended to do.

The Court:

I sustain the objection.

Q. What did you do when you heard that announcement?

A. Well, I told them we would have to put up the money, the Cashier had his money out on his desk, he was balancing his accounts. And I told them we would have to put that in the safe before we could leave.

Q. Did they say anything about what they would do if you didn't go out?

A. Yes, they asked us—told us they wanted us to go out peacefully, if we didn't they would take us out by force.

Q. Now, after they told you that, did you go out immediately or what happened? Just tell the jury what happened.

A. No, we—

Q. Without my having to ask you specific questions.

A. I stayed with the Cashier until he got the money in the safe and locked up, which was about 10 minutes, or 15.

Q. 10 or 15 minutes?

A. Yes, sir.

Q. While he was getting that money locked up, did any further conversation occur?

A. No, they went out, and one of them came back. He thought we were taking too long, and he come back to see about it.

Q. He said you were taking too long?

A. Yes.

Q. And he had come back to see about it?

A. Yes.

Q. What did you tell him?

A. I told him we would go out just as soon as the Cashier got the safe locked up.

Q. Did they come back any more?

A. No, they didn't come back any more.

Q. Did you lock up the money?

A. Yes, sir.

Q. Mr. Smith locked up the money?

A. Yes, sir.

Q. Did you then go out?

A. Yes, sir.

Q. Who was the man doing the most of the talking in there?

A. Well, I didn't know the man at the time, but he was identified to me as Pennington.

Q. Now, had you seen Mr. Pennington before?

A. Yes.

Q. You recognized that you had seen the man before?

A. Yes.

Q. But you did not know his name?

A. I did not know his name.

Q. When had you seen him before?

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Simpson:
I want to identify him.

Q. When had you seen him before?
A. I saw him in April during the other strike.

Mr. Pettus:
We object to that and move to exclude it.

Mr. Simpson:
I've got a right to identify the man.

The Court:
Overruled.

Q. Where did you see him?
A. I saw him at, out in front of the Yard Office, at Decatur.
Q. What were the circumstances under which you observed him at that time?

Mr. Pettus:
We object to that.

The Court:
Now this goes purely to the question of identification?

Mr. Simpson:

We are trying to identify that it was Mr. Pennington that ordered him to come out, yes, sir, if he knows it was Mr. Pennington.

The Court:

Overruled.

Mr. Pettus:

Incompetent, irrelevant, and immaterial. We except.

Q. Go ahead.

A. He accosted me down there at the Yard Office in April.

Q. Go ahead, please, sir, tell us what you saw.

A. And he and the other man, I don't know who the other man was, I have never seen him before or since, they jumped me and hit me, knocked me out.

Q. Unconscious?

A. Yes.

Q. That was in April before this thing happened in October?

A. That's right.

Mr. Pettus:

We move to exclude that.

The Court:

I will exclude it, gentlemen. I have permitted this solely for the purpose of this witness identifying the man.

Mr. Simpson:

That's right.

The Court:

Not for any other extraneous purpose or other purpose but for that purpose only.

Mr. Simpson:

All that we are offering it for, may it please the Court, is purely to show that Mr. Petty recognized Mr. Pennington as the man that was in there in October, because he had seen him on this previous occasion. Does the Court allow that?

The Court:

I am admitting it solely for that purpose.

Mr. Simpson:

That's all we are asking it for.

Q. Now, did you see Mr. Pennington after you got out of the office there at Decatur that afternoon?

A. Yes, sir.

Q. That is after you left the office?

A. He was standing out in front.

Q. And did you have any conversation with him then?

A. Yes.

Q. Now, would you mind telling us what that was?

A. He asked us if we were coming back the next day, and I told him he would have to wait and see, we didn't know.

Q. You didn't know whether you would come back next day or not?

A. No.

Q. Now, what reply did he make to that, if any?

A. He said well, we had better not.

Q. He said well, you had better not?

A. Yes.

Q. Did you hear him make any remark to Mr. Smith about what he would do to him if he showed up there next day?

A. Well, he just—I don't know as he said anything other than that "You had better not come back."

Q. I will ask you, Mr. Petty, if you were scared and afraid to work under those circumstances?

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial, mental operation.

The Court:

Overruled.

Mr. Pettus:

We except.

A. Naturally, yes, sir.

Mr. Pettus:

We move to exclude it.

The Court:

Overruled.

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Petty, you said that there were two or three other men there with Mr. Pennington?

A. Yes.

Q. And do you see them here?

A. No, I don't. I don't recognize any of them.

Q. You don't recognize any of the other men that were there?

A. No, sir.

Q. Is that right?

A. No, sir.

Q. About what time of the day was this?

A. It was a little after 4:00 o'clock.

Q. And what was the closest you got to anyone of the men?

A. Well, in the office I didn't get very close to them. Outside they were standing about 10 feet from the platform where I walked out of the office.

Q. About 10 feet away?

A. Yes.

Q. Was all of the conversation on this occasion carried on in just a conversational tone of voice, that you could hear over the room?

A. Yes.

Q. Was Mr. Toone there at that time?

A. Yes.

Q. Who is Mr. Toone?

A. He is the L&N Special Agent, Police.

Q. Did he have his gun on him then?

A. I imagine so.

Q. On that occasion from the time the first, when the man first came into the office there until you left, about how long was that time that elapsed?

A. About 15 to 20 minutes.

Q. 15 to 20 minutes?

A. Yes.

Q. Now, the money was put away, was it not?

A. Yes, sir.

Q. And the office closed up?

A. Yes, sir.

Q. And every one left in an orderly way there, didn't they?

A. Yes.

Q. And during that whole 15 or 20 minutes did you see any newspaper, either Decatur newspaper or Birmingham newspaper, that had anything in regard to the walkout in it?

A. No, sir.

Q. You didn't see anything like that?

A. No, sir.

Q. And on that afternoon none of the men offered to strike you or do anything of that sort to you, did they?

A. No, not that time.

Q. I mean there wasn't anything of that sort that occurred that afternoon?

A. No, no violence whatever.

Mr. Pettus:

All right. Thank you, sir.

Mr. Simpson:

That's all, Mr. Petty. Come down.

The Court:

Come down.

Mr. Simpson:

May Mr. Petty be excused?

The Court:

Yes, unless there is objection he may be excused.

Mr. Pettus:
So far as we are concerned he may be excused.

(Witness excused.)

Mr. Simpson:
Tell Lee Thomas to come in, please.

LEE THOMAS, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Is your name Lee Thomas?
A. Lee Thomas, yes, sir.
Q. Lee, where do you live?
A. Titusville, Birmingham.
Q. How is that?
A. Out there in Titusville.
Q. Is that the colored section right out here?
A. Colored section, Titusville, yes, sir.
Q. How long have you lived in Birmingham?
A. I have been here ever since I was a boy, 1894.
Q. And who do you work for, Lee?
A. Now?
Q. Yes.
A. L&N Railroad.
Q. How long have you worked for the L&N Railroad?
A. I started in 1910, July.
Q. That would be about 46 years then, wouldn't it?

A. Yes, sir, the first work I did was here in this town.

Q. You are going to have to talk out so all of these gentlemen can hear you, Lee.

A. 1910.

Q. 1910?

A. Yes, sir.

Q. That's loud enough.

A. 1910, July.

Q. All right.

A. Yes, sir.

Q. What sort of job do you do for the L&N Railroad?

A. Fireman.

Q. Do you remember when this strike occurred here in Birmingham, or walkout, last October, on Sunday?

A. On a Sunday. I didn't know it until I got back on my run.

Q. What run had you had that day?

A. 76.

Q. Where does 76 go?

A. It runs from New Orleans to Cincinnati I guess. We stopped here. Our junction point is here.

Q. Your junction point is here?

A. Yes, sir.

Q. Where did you get on that engine that day?

A. Montgomery.

Q. Where were you due to get off?

A. Boyles.

Q. At Boyles?

A. Yes, sir.

Q. It was a freight train then?

A. Sir?

Q. It was a freight train, wasn't it?

A. Yes, sir, freight train.

Q. Who was your engineer?

A. Hobart Parker.

Q. Hobart Parker?

A. Yes, sir.

Q. Now, as you came on into Birmingham, you hadn't heard, I believe you say, anything about the strike?

A. I hadn't heard anything about it.

Q. When you got down here to the 18th Street crossing, did anything unusual occur?

A. Well, when we stopped there, Weldon and another fellow got up on the engine.

Q. That is Mr. Jim Weldon?

A. Yes, sir.

Q. And another man?

A. And another man.

Q. Were they due to get on the engine there? Were you due to pick them up, to pick up anybody there?

A. We wasn't due to pick up nobody, but they got up there when we stopped.

Q. When you came to a stop at 18th Street?

A. They boarded the engine.

Q. You had to come to a stop there in bringing that train in there, didn't you?

A. We had left our train at Jemison.

Q. You had been ordered to leave your train at Jemison?

A. Yes, sir. We had three units and the caboose.

Q. You had three Diesel units and the caboose?

A. Yes, sir.

Q. When you got to 18th Street what did you stop for?

A. Stopped there to get orders, come on and go to Boyles or what, was we to take the engine to Boyles or what to do with it.

Q. Well, you stopped there?

A. At the 18th Street Telegraph Office.

Q. At 18th Street Telegraph Offie to pick up your orders?

A. That's right.

Q. When you stopped, then Mr. Sexton and this other man—I mean Mr. Jim Weldon and the other man that you can't identify got on your engine?

A. Got on the engine.

Q. When Mr. Weldon and this other man got on there did they say anything to you?

A. When they first got on the engine they went to talking to Mr. Parker.

Q. Talking to Mr. Parker?

A. Yes, sir.

Q. Did they give you any attention?

A. They didn't say nothing to me until we got down to the crossover switch, to cross over to take the train, the engine over under the shed.

Q. Did they stay on your engine?

A. They stayed on there until we backed up.

Q. Until you backed up?

A. Yes, sir.

The Court:

Was this at Boyles?

Mr. Simpson:

No, no, down here at 18th Street Passenger Station.

The Witness:

18th Street. We backed up in No. 4 track.

Q. No. 4 track?

A. Yes, sir.

Q. Down here in the passenger shed?

A. Yes, sir.

Q. They stayed on your engine all that time?

A. On the engine, yes, sir.

Q. Now then, what was the first thing they said to you?

A. Said "God damn you", says "You better not come out here no more." I says "What's the matter now?" They said "Its a strike."

Q. You asked them what was the matter?

A. Yes, sir, I said "What's the trouble?" They said it was a strike.

Q. They said it was a strike?

A. A strike, and "God damn you, you better not come out here. If you do, I'm going to kill you."

Q. They said if you did they were going to kill you?

A. He was going to do it, Mr. Weldon was going to do it.

Q. That is Mr. Weldon?

A. Yes, sir, he was saying that.

Q. Did he say anything about whether this strike was going to be like that other one?

A. No, sir, he said "This strike isn't like the other one, its different, and you had better not come out here, God damn you, I'll kill you."

Q. Did he have anything in his hands when he said that?

A. He had a knife, switch-blade knife, and shook it at me just that way (illustrating), he says "God damn you, I'll kill you."

Q. All right.

A. That's right. I was scared.

Q. You were scared?

A. I was scared to death.

Mr. Pettus:
We move to exclude that, that "I was scared to death.".

The Court:
I will sustain the objection and exclude that gentlemen, at this juncture, because it was a voluntary statement on the part of the witness.

Mr. Simpson:
All right.

Q. I will ask you then, were you scared, Lee?

Mr. Pettus:
We object to that.

A. Yes, sir.

The Court:
I overrule that.

The Witness:
You overrule that?

The Court:
Yes.

Q. Now, these other men, did this other man that stayed there that got on there with Mr. Weldon, did he say anything to you about it?

A. He said "That's a scab anyhow, ain't he?" Weldon, he says "Yes, but God damn it, he ain't going to scab this time."

Q. Now then, did you stay on that engine or did you get off?

A. Oh, I stayed on there until we had orders from Mr. Mitchell to shut all the engine down, put out the lights, charge everything necessary, and then go home.

Q. You left it in the L&N station?

A. Yes, sir, we left it in the L&N shed.

Q. When you left that engine, where did you go?

A. Downstairs to the booth to call up the man to come and get me.

Q. You mean down in the lower level down there where that public telephone booth is?

A. Where the public telephone booth is.

Q. In the L&N station?

A. In the L&N station.

Q. Did you go in that booth?

A. I went in there, yes, sir.

Q. Tell us what happened around there?

A. Well, when I went in there, and I looked back around, they were standing out there, he was, all around, about four or five of them.

Q. Four or five of them?

A. He shook his knife again. He says "What are you doing in here?" I says "I'm calling up to go home." "God damn it, you are going to get killed yet. I'll kill you if you come back here." I says "I'm not coming back, you need not worry. I won't be back."

Q. Did he go away then?

A. After I called up and the man come, they stood and watched to see the man come and get me, then they all went away. I looked back when I was getting in the car.

Q. Then they left?

A. Then they left, then I left and went on home

Q. You didn't go back any during that strike, did you?

A. Unh-unh, no, sir, I didn't go back.

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Lee, after all of these events that you have testified about, did Mr. Weldon offer to take you home in his automobile, or to get you carried home in an automobile?

A. Mr. Weldon offered to carry me home?

Q. Yes.

A. No, sir.

Q. Did anybody there offer to take you home in an automobile?

A. Nobody.

Q. Nobody?

A. I called the man to get me.

Q. What time did you pull into the Passenger Station?

A. I think it was about 11:30 or 11:45. I never looked at my watch.

Q. About 11:30 or 11:45?

A. Yes, sir.

The Court:

Was that on Surday or on Monday?

The Witness:

Sunday night.

Q. What time did you leave Jemison?
A. Jemison?
Q. Yes.
A. I didn't pay it any particular attention. It was around 10:00 o'clock at night.
Q. Around 10:00 o'clock?
A. When we set the train out there.
Q. You came on into this station?
A. Yes, sir.
Q. Are you sure it was Mr. Weldon that had the knife or was it the other man?
A. Something else? That was a knife.
Q. He had a knife, did he?
A. Yes, sir.
Q. He had it out?
A. He had it out, shaking it at me, just like this (illustrating).
Q. He had it right in front of you where you couldn't miss it?
A. He had it where I could see it, right like that (illustrating).
Q. The knife didn't look very sharp, did it?
A. It looked like a razor, as sharp as it could be

Mr. Pettus:
That's all.

The Witness:
That's all?

Mr. Simpson:
That's all, Lee.

The Witness:
All right.

Mr. Simpson:
Can this witness be excused, gentlemen?

The Court:
He can be excused unless there is objection.

Mr. Pettus:
We excuse him.

The Court:
You are excused.

(Witness excused.)

Mr. Gibson:
Call Mr. Claude Johnston.

CLAUDE JOHNSTON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:
Q. Is this Mr. Claude Johnston?
A. It is.
Q. Do you live in Birmingham?
A. Yes, sir.
Q. For whom do you work Mr. Johnston?
A. At the present time I work for the Birmingham Southern Railroad Company.
Q. What is your title there?
A. Assistant to the Vice-President.

Q. In October, of 1955, will you tell the jury whether or not you were an employee of the L&N Railroad Company?

A. I was employed by the L&N Railroad Company as Division Engineer of the Birmingham Division.

Q. Where was your office at that time?

A. At 1909 Morris Avenue.

Q. Do you recall in October, of 1955, when there was a strike or work stoppage?

A. I do.

Q. When did you first hear about it?

A. At about 6:30 a. m., one of my track supervisors called me at my home and said that there was some kind of disturbance in front of the office building.

Q. Did he tell you what was going on down there?

A. He said that it appeared to be a strike, that there were—

Mr. Taylor:

If the Court please, we object to that and move to exclude it.

The Court:

I sustain the objection and exclude it, gentlemen.

Q. What, if anything, did you do then Mr. Johnston?

A. I came to the office building in about 30 minutes after he called me.

Q. All right, sir, what, if anything, did you see there?

A. Well, I saw—

Q. Out of the ordinary?

A. Well, I saw several people milling around on the street in front of the office building. Some I recognized, and some I did not, many of them that did not report to that point for duty. I saw several maintenance of way men there that asked me what was going on, and I was unable to tell them.

Q. Stop there a minute.

A. All right.

Q. The maintenance of way men are men who came under your supervision?

A. Yes, they came under my supervision.

Q. All right, proceed.

A. They asked me if I knew what the situation was, and I told them that I did not. And they asked me what they should do, and I told them to go to work, that so far as I knew there was no reason why they should not. Most of them left in 30 minutes or so.

Q. Did you remain there or did you go away?

A. I remained in the vicinity of the entrance to the office building for 2 or 3 hours.

Q. That entrance is right on the sidewalk, isn't it?

A. As a matter of fact, one step encroaches slightly on the sidewalk.

Q. And the stairs go up from the sidewalk?

A Stairs, you go up from the sidewalk.

Q. What is up on the second and third floors, or was there then?

A. Well, the Division offices are located on the second floor, and also on the third floor. My office was on the second floor, and the Superintendent's office was on the second floor.

Q You said you stayed there about 3 hours, or 4?

A. That's right.

Q. Did you go inside of the building?
A. Not right away, I didn't go in it.
Q. Did you see any people that you recognized?
A. Well, I saw one fireman that was later identified to me as Mr. Thomas.
Q. Do you see him in the Courtroom now?
A. Yes, sir, I see him in the Courtroom.
Q. All right, sir.
A. Over there (indicating).
Q. Is that Reese Thomas?
A. Reese Thomas.
Q. Yes, sir. Now, just tell the jury what, if anything, you saw Reese Thomas do on that Monday, and tell them what you heard him say.
A. Well, I had started to enter the building and Mr. Thomas asked me if I was going upstairs, and I said that I probably would later on, but I hadn't planned to go up right away. And he was in front of the entrance as if to block it.

Mr. Taylor:
We object to that and move to exclude it.

The Court:
I sustain the objection, or grant the motion, "As if to block it."

Mr. Gibson:
Yes, sir. Your Honor is not excluding the statement he was in front of the entrance?

The Court:
No, in front of the building.

A. He was in front of the entrance to the building, and was engaging in loud conversation with several people that came up to the entrance.

Q. Well, what, if anything, did you hear him say to any of these people who came up?

A. Well, he told them that there was a strke on the Railroad, and that there was nothing going on upstairs, there was no one up there, and they shouldn't enter the building, and stood in front of the entrance.

Q. Did he say that one time or more than one time?

A. Well, it was several times. There were several people that came to the building, apparently to enter the building on business.

Q. Did you see Ben Mitchell that morning?

A. I saw Ben Mitchell, who at that time was Trainmaster at the Boyles Terminal. And he blocked the entrance to the building and told Mr. Mitchell not to go upstairs.

Mr. Taylor:

We object to that, and move to exclude it, as to blocking. That calls for a mental operation and a conclusion of the witness.

Mr. Gibson:

I think that is a shorthand rendition, your Honor.

The Court:

Physically speaking: I overrule it. If he was physically blocking the entrance.

A. He interfered with the entry to the building.

The Court:
Overruled.

Mr. Taylor:
We move that be exeluded, voluntary statement and another conclusion.

The Court:
Overruled.

Mr. Gibson:
All right, sir.

Q. Did you see Mr. Mitchell and Mr. Thomas together at the entrance that morning?
A. I saw them together at the entrance.
Q. Do you know Mr. H. G. Breetz?
A. Yes, I do.
Q. Did you see him on Morris Avenue that morning?
A. I saw him on Morris Avenue that morning.
Q. Will you tell the jury what, if anything, occurred when Mr. Breetz was there?
A. Well, Mr. Breetz attempted to enter the building and was told that no one was upstairs, that it would not be necessary for him to go up. And then some one asked him who he was and he replied "I am a railroad man", and they asked him what he did for the Railroad, and he said that was his affair.

Mr. Taylor:
Excuse me, Mr. Johnston. Your Honor, we object to these unidentified sources of statements, that "they" said so and so.

The Court:
I sustain the objection.

Mr. Gibson:
We will connect it up. If we don't, it will go out.

Mr. Taylor:
I don't want it to go in, if a fictitious person is talking.

Q. All right, go ahead.

The Court:
Was Mr. Thomas there present at that time?

The Witness:
Yes, he was present there at the time Mr. Breetz attempted to enter the building.

The Court:
All right.

Mr. Taylor:
He was not talking, is that right? That's what I am trying to get over.

The Witness:
Mr. Thomas did enter into the conversation.

The Court:
I overrule the objection.

Mr. Gibson:
All right.

Q. What happened after that?

A. Mr. Breetz left without further entry.

Q. Were there or not other people who came there during that period also?

A. There were some other people that came there. One person, whom I cannot identify, with a baggage check, stated that he desired very much to obtain a piece of baggage from the baggage room. And he again was told by Mr. Thomas that the Railroad was on strike, and that it was impossible for him to get into the baggage room, and this person left.

Q. About what time of day was it when you left there?

A. I would say approximately 11:00 o'clock.

Q. Was Reese Thomas still there?

A. He left before I did.

Q. About what time of day?

A. I don't remember, but it was probably about 10:30.

Mr. Gibson:

You may have the witness.

Cross Examination.

By Mr. Taylor:

Q. Mr. Johnston, what was your employment in October, 1955?

A. I was Division Engineer of the Birmingham Division.

Q. Did you have any duties along Morris Avenue this morning?

A. My office was in the building on Morris Avenue.

Q. Did Mr. Kirchner tell you to go down there on Morris Avenue and see who you saw down there?

A. No.

Q. Did anybody tell you to?

A. No.

Q. You couldn't perform any of your duties down there on the street, could you?

A. Well, I could perform my duties to the extent that I could answer questions from members of the Maintenance of Way Department who worked under my supervision.

Q. They all left after you got there?

A. Not immediately.

Q. Within 15 minutes or so?

A. I recall about 10:30 other members of the Maintenance of Way Department came along.

Q. So you posted yourself down there on Morris Avenue for 3 hours to tell the maintenance of way employees what was going on, is that right?

A. Not solely for that purpose.

Q. What time did you arrive there, Mr. Johnston? This is Monday morning we are talking about, the 24th of October, is that correct?

A. I believe I said approximately 7:00 o'clock.

Q. You got there at 7:00 o'clock?

A. About that time.

Q. Who was in the vicinity of Mr. Kirchner's office at that time?

A. Do you mean the entrance to the building?

Q. Yes, sir, the entrance to the building.

A. Well, I saw Reese Thomas there, and I saw Mr. Schilleci there. Those are the only two men I recognized.

Q. Did you see Joe Saab there?

A. Later on I saw Joe Saab there.

Q. Now, how long have you known Reese Thomas?

A. I haven't known Reese Thomas personally at all.

Q. How long had you known him on October 25?

A. Only after he was pointed out to me.

Q. Or the 24th—excuse me.

A. Only as he was pointed out to me.

Q. Had you ever seen Reese Thomas before that Monday morning, Mr. Johnston, to your knowledge?

A. I had seen him but I didn't know his name.

Q. Where had you seen him?

A. I had seen him in the Yards at Boyles and on trains.

Q. Now, you didn't know who he was?

A. Well—

Q. When you saw him down there did you?

A. Well, I knew he was an employee of the Railroad.

Q. You didn't know who he was?

A. I couldn't identify him.

Q. You didn't know he was a switchman or fireman or engineer?

A. I knew he was a fireman.

Q. You knew he was a fireman?

A. Yes, I knew he was a fireman.

Q. You didn't know his name?

A. No.

Q. We can agree on that, can't we?

A. I didn't know his name at that time, no, sir.

Q. And you didn't know Charlie Schilleci's name, did you?

A. I knew Charlie Schilleci.

Q. All right, you knew him?

A. Yes.

Q. When did you find out that man you thought you saw, or the man you saw was Reese Thomas?

A. I asked Mr. Camp his name, shortly after I arrived.

Q. Where was Mr. Camp?

A. Mr. Camp was in front of his office, which is adjacent to the entry to the building.

Q. That would be about 7:15 or 7:30?

A. Approximately that.

Q. Did Mr. Camp come out on the sidewalk with you?

A. Yes. As a matter of fact, he and I stood there talking for some time.

Q. Now, how was Mr. Thomas dressed?

A. I believe he had on a sport shirt, sort of a loud colored sport shirt. It has been some time ago, I don't remember those details.

Q. You don't remember those details?

A. No.

Q. Did he have on a jacket of any kind?

A. I believe it was a gray jacket.

Q. Kind of a gray jacket?

A. Yes, sir.

Q. How was Mr. Schilleci dressed?

A. He had on a sport shirt, but I don't remember the color of it.

Q. Let me note this down. You say Mr. Thomas had on a sport shirt and a gray jacket, is that right?

A. That's the way I remember it.

Q. Is that what you said?

A. That's the way I remember it.

Q. Now, you arrived there about 7:00 o'clock I believe you said?

A. About that.

Q. You saw Mr. Reese Thomas out in front of the doorway when you first got there?

A. Or shortly after I got there.

Q. Well, you talked to Mr. Camp about 7:15 and you saw him out there then, didn't you?

A. Yes, that's right.

Q. So you saw him out there between 7:00 and 7:15 on Monday morning, is that correct?

A. Yes.

Q. Now, how long did you stay there?

A. Until about 11:00.

Q. And did Mr. Thomas leave before you did?

A. I believe he did.

Q. About what time did he leave?

A. I think about 10:30. I didn't make a note of the time, sir.

Q. All right. Well, from 7:15 on Monday morning, October 24 until 10:30, approximately, was Mr. Reese Thomas in your sight at all times there at Mr. Kirchner's doorway or in that vicinity?

A. No, not at all times because, if I remember right, I probably left there. I might have gone to get a cup of coffee, I don't remember.

Q. You didn't tell us that a minute ago, but let's go into it now.

A. All right.

Q. Did you leave to go and get a cup of coffee?

A. I did about 9:00 o'clock.

Q. About 9:00 o'clock?

A. Yes.

Q. How long did you stay gone?

A. About 10 minutes, I guess.

Q. And was Mr. Thomas there when you went to get the coffee?

A. Yes.

Q. Was he there when you got back?

A. Yes.

Q. Did you leave there any other time?

A. No.

Q. Did Mr. Thomas leave there any other time?

A. I don't know if he did.

Q. Sir?

A. I don't believe he did.

Q. Well, your judgment is that from 7:10 or 15 until 10:30, with the exception of the time you were gone to get a cup of coffee, he was in the vicinity of Mr. Kirchner's office at all times, is that correct?

A. Yes, sir, that's right.

Q. What time did Mr. Ben Mitchell get down there that morning?

A About 8:00 o'clock I believe, sir.

Q. Was Mr. Thomas there when Mr. Mitchell got there?

A. He was, yes.

Q. When Mr. Mitchell got there?

A. He was.

Q. As a matter of fact, Mr. Thomas had been there at least 45 minutes before Mr. Mitchell got there, hadn't he?

A. He probably had, yes.

Q. Did I understand you to say that Mr. Schilleci was standing alongside of Mr. Thomas at the doorway to Mr. Kirchner's office?

A. He was in the vicinity of the door.

Q. Was he there when Mr. Ben Mitchell came?

A. I don't recall.

Q. You don't recall?

A. No. Mr. Schilleci came and went two or three times. He didn't stay there long.

Q. Did Mr. Schilleci do most of the talking down there to these people?

A. Not necessarily.

Q. Do you know where that Union News office is located down?

A. Union News office, or the lunch room?

Q. The lunch room?

A. Yes.

Q. Did you ever see Mr. Thomas go up there around that?

A. No, I didn't.

Q. Could you have seen him from where you were posted down there had he gone up there?

A. I probably could have, but I might not have observed it if he had gone.

Q. Did any other L&N officials come down on Morris Avenue while you were there besides Mr. Mitchell?

A. No.

Q. You have already mentioned him?

A. Not that morning.

Mr. Taylor:

I believe that's all.

Mr. Gibson:

Just one more question.

Re-Direct Examination.

By Mr. Gibson:

Q. Mr. Johnston, this Joe Saab that you saw down there, do you know what his occupation with the Railroad Company was?

A. Mr. Joe Saab is a fireman.

Q. Charlie Schilleci, the man you say you saw and recognized, what was his occupation?

A. He was a fireman.

Mr. Gibson:

That's all. Come down. May this witness be excused?

The Court:
Unless there is objection you may be excused.

Mr. Pettus:
No objection.

(Witness excused.)

The Court:
Call your next witness.

Mr. Simpson:
Mr. Long.

JOHN D. LONG, a witness called by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Mr. Long, will you state your name, please, sir, to the jury?
A. John D. Long.
Q. Where do you live?
A. Hartselle.
Q. Alabama?
A. Yes, sir.
Q. Where do you work?
A. Decatur Freight House.
Q. Who do you work for at Decatur?
A. Louisville & Nashville Railroad.
Q. At the freight house?
A. Yes, sir.

Q. Now, that is the office downtown?

A. Yes, sir.

Q. How long did you say you worked for the L&N or did I ask you that?

A. Going on 13 years.

Q. Were you on duty on the afternoon of Monday, October 24, last year?

A. Yes, sir.

Q. What are your duties?

A. Rate clerk.

Q. Where does that keep you, where is your desk?

A. Second desk as you go in the freight house, freight office there.

Q. If you enter at the front door, you are the second desk on the inside?

A. Yes, sir.

Q. As you enter to the right it is what?

A. Cashier.

Q. Cashier?

A. And rate clerk.

Q. And rate clerk to the left?

A. Yes, sir.

Q. That's you?

A. Yes, sir.

Q. I will ask you whether or not on the afternoon of that day, that is Monday, the 24th of October, anybody came in there, any unusual occurrence happened in your office?

A. Well, two men came in and asked the Cashier who was in charge and he told them Mr. Hardwick. Mr. Hardwick was out. he was in the yard. They said, one fellow spoke out and said "I guess you know we're on strike, and we would like for you to come out." And one of the other men looked at the operator, and called him some nickname, I forget what the nickname was.

Q. Called the operator by some nickname?

A. Yes, sir, said "Come on out." He said "I'm coming." And he got up and started out, and I started to get my papers out of my desk, my BA sick card and my Social Security card. And one of them came on around and said "Let's go."

I said "I've got to get my cards, personal things out", and he says "Make it snappy and get out."

Q. He said "Make it snappy and get out"?

A. Yes, sir. And so I got out.

Q. And you got out?

A. Yes, sir.

Q. Had you had any plans to get out before he came in there and told you to get out?

Mr. Pettus:

We object to plans.

A. No, sir.

Mr. Pettus:

Mental operation.

The Court:

I sustain the objection.

Q. You were there doing your work up until the time he came in, were you?

A. Yes, sir.

Q. When he came and told you to get out, you got out?

A. Yes, sir.

Q. Now, did he say anything to you about what he would do to you if you didn't get out, when you were getting out your Social Security card there?

A. No, sir, not exactly. He said "Get your things and get out and make it snappy and get out."

Q. Did he say anything to you—did you recognize either of those men? Did you know either one of them by name?

A. No, sir, never seen them before.

Q. That was the same occasion that Mr. Smith and Mr. Petty were in there?

A. Yes, sir.

Q. They were also in the office at that time?

A. Yes, sir, four or five of us were in the office.

Q. Four or five in that office?

A. Yes.

Q. Had you personally ever seen either of those men before?

A. No, sir.

Q. When you got outside, did anything pass between you and either of those men?

A: Well, I asked one of them if—I said we had to come back tomorrow.

Q. You asked what?

A. I asked one of them,—I told him we would have to come back tomorrow, rather, unless they put up a picket line to protect us by. And one of them pulled a paper out of his pocket and showed me and said "We're on strike, we don't have to have a picket line up."

And I told him that we would have to have some kind of protection, we would have to be at work unless there was a picket line up.

Q. What did he say to you when you said that?

A. He said "You wouldn't have to have a picket line up." I heard one of them tell Mr. Petty that "We better not come back and catch you in tomorrow morning", and they did,—to not come back tomorrow

morning, if he came back it would cause him another trip up there, not to come back.

Q. All right. Was one of those fellows sort of a red, sandy haired fellow?

A. Yes, sir.

Q. Did you hear him have a conversation with Mr. Toone?

A. I heard him tell Mr. Toone that he fired back during the other strike, and if he fired—

Q. You heard this red headed man say something?

A. Yes, sir.

Q. He said it to Mr. Toone?

A. Yes, sir, to Mr. Toone.

Q All right, now, what did the red headed man, or the sandy haired man say to Mr. Toone?

A. He told him he fired before during the other strike, 58 day strike, "If you fire this time, you will fire in hell."

Q. Because what?

A. Because—

Mr. Pettus:

We object to leading.

Mr. Simpson:

I'm not leading.

Q. Finish the conversation that you heard.

A. He went on to tell him he got in trouble before, and he didn't mind getting in trouble this time.

Q. If Mr. Toone fired this time he would fire in hell?

A. Yes.

Q. All right. Did Mr. Toone say anything back to him, or aggravate him?

A. No, sir; best I remember, Mr. Toone told him, said "We don't want any trouble. I would hate to see you get in trouble. I'm sure I don't want to get in trouble."

Q. All right. Did you hear this man say to Mr. Petty anything about what had happened before?

A. Yes, sir, one of them told Mr. Petty that he got whipped before.

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial; no identification involved here.

Mr. Simpson:

This was said at this time, if Your Honor please.

The Court:

It is the same occasion as I understand.

Mr. Simpson:

Yes, sir.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. What did he say to him?

A. One of them told Mr. Petty he got whipped before, and said he would get whipped worse this time.

Q. I don't know whether these gentlemen can hear you or not, you talk so fast and so indistinct. I'm afraid they are not getting what you are saying. Tell

us again in a distinct way what this man said to Mr. Petty?

Mr. Pettus:
We renew our objection.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Take your hand down from your mouth.

A. Mr. Petty was walking out towards his car, and one of the fellows told Mr. Petty that he got whipped before, and he would get whipped worse this time; it would be best for him not to come back the next day.

Mr. Pettus:
We move to exclude the answer.

The Court:
Overruled.

Mr. Pettus:
We except.

Mr. Simpson:
You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Let me ask you now which one of the men made the first statement when they came in the office there?

A. The small fellow. I have never seen either one of them before; I didn't know his name.

Q. There was just two of them, is that right?

A. Two that I remember.

Q. Just two that you remember?

A. There could have been three. I don't remember whether there were three or not.

Q. You just remember two?

A. I remember two of them.

Q. You described one of them as a small fellow, and another as a sandy haired fellow?

A. Yes, sir.

Q. Those were the only two you saw?

A. I saw five or six more on the outside, but I didn't pay any attention to them.

Q. You saw five or six more?

A. Yes, sir, on the outside, but I didn't pay any attention. I didn't know them.

Q. You don't know who they were, do you?

A. I don't know who any of them were.

Q. You don't know who any of them were?

A. No, sir.

Q. You just saw five or six strangers on the outside, and saw two strangers inside?

A. Yes, sir.

Q. When was the newspaper shown to you?

A. When I walked outside, and I told—that fellow said not to be back and I said we would have to come back unless the picket line was up to protect us. I

told him we would have to have some kind of portection, or we would have to come on to work.

Q. Then he showed you the newspaper, is that right?

A. Yes, sir.

Q. At that time Mr. Toone was standing right there, wasn't he, Mr. Long?

A. Yes, sir.

Q. Mr. Toone is Special Agent for the L&N?

A. Yes.

Q. And he had his gun on him at that time?

A. I don't know whether he had a gun or not.

Q. He usually carries a gun, doesn't he?

A. I couldn't say.

Q. You know Mr. Toone?

A. Yes, sir.

Q. Mr. Toone told these men at that time that he didn't want to have any trouble, didn't he?

A. Yes, sir.

Q. They told him there wasn't going to be any trouble, didn't they?

A. Unless they came back next morning.

Q. But there wasn't any trouble was there?

A. No, sir, we didn't have any trouble that afternoon—

Q. Well—

A. —because we go out, like they ordered us to.

Q. Did you have any trouble next morning?

A. No, sir, didn't work next morning.

Mr. Simpson:

He interrupted the witness before he finished answering.

A. We didn't work next day.

Q. I say, you didn't have any trouble?

A. No, sir.

Q. When did you start back to work?

A. Stayed off two days.

Q. Stayed off two days and then came on back?

A. Yes, sir.

Q. What were your duty hours that day?

A. 8:00 a. m. until 5:00 p. m., 12:00 to 1:00 for lunch

Q. What is that?

A. 12:00 to 1:00 for lunch.

Q. What time did these men first show up?

A. I would say it was around 4:20. I know it wasn't too long before quitting time.

Q. You were out of there by about a quarter of 5:00, or 5:00 o'clock?

A. A little before then; about five minutes after they came in there.

Q. About five minutes?

A. Yes, sir.

Q. Everybody hadn't left when you did then? Mr. Petty and Mr. Smith—

A. Mr. Petty and Mr. Smith was still in the office, trying to put up some money.

Q. They were still back in the office, weren't they?

A. Putting the safe up when I walked out the door.

Q. Now, all of these conversations that you have been taking that they had with Mr. Petty and so on, were they in your presence?

A. Yes, sir.

Q. Or is that what somebody told you?

A. I didn't leave the premises. I walked on the outside of the freight office.

Q. In other words, you waited until they were ready to go out, did you?

A. Yes, sir.

Q. Then everybody walked out together?

A. No, I was already outside of the office, but the talking to Mr. Petty was when he got out on the platform, outside of the freight office.

Q. Then you all just walked off the premises, and is that all?

A. Well, we got in our cars.

Q. And drove off?

A. Yes, sir, I did. I didn't stay to see what they did.

Q. Mr. Long, Mr. Toone is Special Agent, regularly assigned up there at Decatur, isn't he?

A. Yes, sir.

Q. It is his duty to preserve order on the Railroad, isn't it, on the Railroad property?

A. I don't know. I've got my job, and I don't know what his duties are to tell you the truth. I mean, I never investigated what his duties are.

Q. He was standing right there, wasn't he?

A. He was in the office, yes, sir, when they came in.

Q. At all times, was he?

A. Yes.

Q. He didn't interfere with anything that was going on there, did he?

A. Well, not in there, no, sir.

Q. He did not?

A. No, sir.

Q. And he didn't pull the gun or do anything of of that sort, did he?

A. No, sir, I don't know if he had a gun or not.

Q. You don't know if he had a gun or not?
A. I didn't see one, no, sir.

Mr. Pettus:
All right, that's all.

Re-Direct Examination.

By Mr. Simpson:
Q. I forgot to ask you, are you a member of the Clerk's Union, Mr. Long?
A. I am.
Q. What is the official name of that Union?
A. Railway, Steamship Clerks, and Handlers, Freight Handlers.
Q. What?
A. Railway, Steamship Clerks and Freight Handlers.
Q. Did you have any orders from your Union to strike?
A. No, sir.
Q. Or come out?
A. I did not. I called my Local Chairman that night, and he told us to go back the next morning.
Q. Your Local Chairman told you to go back the next morning?
A. Unless they had a picket line up.
Q. Unless they had a picket line up. Now, you didn't go back next morning?
A. I went in and stayed about 30 minutes, me and the Cashier and Chief Clerk. Nobody else came in, and we thought it best to leave.
Q. Were you scared to stay there?
A. Yes, sir, I was.

Mr. Pettus:
We object.

The Court:
Overruled.

Mr. Pettus:
We except. We move to exclude the answer.
Q. Your answer was what?
A. Yes, sir. I was afraid they might harm me or my family.

Mr. Pettus:
I move to exclude that.
A. I didn't want to take any chances.

The Court:
I sustain the objection to that.

Mr. Simpson:
All the details, "why".

The Court:
The details. You will not consider that, gentlemen.

Mr. Simpson:
I just wanted the answer to the one question.
Q. Were you scared?

Mr. Pettus:
We object to that.

The Court:
Overruled.

A. I was afraid to stay.
Q. Is your answer yes or no?
A. Yes, sir.
Q. You were?

Mr. Pettus:
We move to exclude the answer.

The Court:
Overruled.

Mr. Pettus:
We except.

The Court:
You may come down.

Mr. Pettus:
May I ask one question?

The Court:
Yes.

Re-Cross Examination.

By Mr. Pettus:
Q. Mr. Long, can you identify either one of those men in the Courtroom here?
A. I'm afraid I couldn't. I had never seen the men before. I would be afraid to say whether I recognize them or not.
Q. You won't swear—
A. I won't swear, because I might be wrong.
Q. —that you can recognize either one of the man that you say you saw them?
A. No, sir.

Mr. Pettus:
All right. Thank you.

The Court:
The witness may be excused unless he is needed further.

Mr. Simpson:
Mr. Long, you may go on back to Decatur.

(Witness excused.)

The Court:
Call your next witness Mr. Simpson.

Mr. Simpson:
Call Mr. McKenzie.

JAMES McKENZIE, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you state your name, please, sir?
A. James McKenzie.
Q. Where do you live?
A. Cullman.
Q. Where do you work?
A. Well, I work four days a week at Cullman and one at Decatur.
Q. Do you work for the L&N Railroad?
A. Yes, sir.

Q. What is your job?
A. Operator.
Q. Telegraph operator?
A. Telephone.
Q. Telephone operator?
A. Yes, sir.
Q. And where were you on Monday, October 24, last year?
A. October 24, I don't remember the particular date.
Q. Well, let's say on Monday when the strike happened here at Boyles. Do you remember when the strike happened here in October, last year?
A. I was working at Oakworth.
Q. At Oakworth. Now, by that you mean up at Decatur?
A. That's right.
Q. That is the Decatur yard?
A. That's right.
Q. Are you a member of the Union?
A. Yes, sir.
Q. Which Union?
A. ORT.
Q. Order of Railroad Telegraphers?
A. Yes, sir.
Q. That is at that time?
A. Yes, sir.
Q. Now, you were there at the Oakworth or Decatur Yard Office?
A. Yes, sir.
Q. That is down at the roundhouse?
A. That's right.
Q. About a mile this side of the main part of Decatur, isn't it?
A. That's right.

Q. Did anybody come into your office there and create any disturbance that day?

A. Yes, sir.

Q. On that Monday?

A. Several men came in and told us to pull the pins, they had a strike going on at Boyles.

Q. Several men came in and said pull the pin?

A. Yes, sir.

Q. What do you Railroad mean by "Pull the pin"?

A. Take off.

Q. Take off?

A. Yes, sir.

Q. Well, did you take off?

A. Yes, sir.

Q. Were you scared?

A. I wasn't to say scared, but I just wasn't taking any chances, that's all.

Q. You were not taking any chances?

A. No, sir.

Q. And did you say anything to these men about you didn't see any picket line?

A. Yes, sir, I told them that I couldn't very well go off and leave my job unless there was a picket line, or either some sort of a threat or something of that description.

Q. What did they say to you about that?

A. They said "Well, we are going to be the last ones to leave." I said "That's good enough for me, I'm gone."

Q. You are gone?

A. Yes, sir.

Q. All right.

A. Yes, sir.

Mr. Simpson:
You can have the witness.

Cross Examination.

By Mr. Pettus:
Q. What office were you located in there at Decatur?
A. In the Yard Office.
Q. In the Yard Office?
A. Yes, sir.
Q. That's not the Freight Office?
A. No, sir.
Q. Not part of the Freight Office?
A. No, sir.
Q. How far is that Freight Office away from there?
A. Oh, it is a mile I imagine.
Q. It is a mile you imagine?
A. Its uptown.
Q. About what time did these men come in there?
A. I don't remember exactly. I got to work—well, I go to work at 3:00, but I got there about 2:30. I imagine somewhere a little after 4:00.
Q. A little after 4:00?
A. Yes, sir.
Q. How many men were there?
A. Right offhand I don't remember, but four or five I believe.
Q. Four or five?
A. I believe there were, I am not sure.
Q. Four or five men?
A. Yes, sir.
Q. Do you see any of them in the Courtroom?
A. No, sir.
Q. You don't see any of them here?
A. No, sir.

Q. Was there a newspaper displayed at any time during this conversation with the men?

A. Yes, one of them said, or he had a paper that said something about a strike in Birmingham.

Q. In other words, it was a Birmingham paper?

A. Yes, sir.

Q. And it had news about the strike in Birmingham, is that right?

A. Yes, sir.

Mr. Pettus:

All right, that's all.

Re-Direct Examination.

By Mr. Simpson:

Q. Had you ever seen any of these men before they came in there that you knew of?

A. No, sir.

Q. When you say you don't see any of them in the Courtroom, you mean you don't recognize any of them?

A. No, sir.

Q. You are not sure whether you would recognize them this long, nearly a year afterwards or not, are you?

A. I wouldn't have recognized them I don't guess if I had seen them next day really and truly.

Q. Yes, you don't mean to say there are not any here in the Courtroom?

A. No, sir.

Q. You just say you don't recognize them, is that right?

A. I don't recognize any of them, no, sir.

Mr. Simpson:
That's all. Come down.
May Mr. McKenzie be excused, Your Honor.

The Court:
He may be excused unless there is objection.

Mr. Pettus:
Yes, sir, we excuse him.

The Court:
You are excused.

(Witness excused.)

The Court:
Call your next witness.

Mr. Simpson:
Mr. Mehaffey.

JOHN C. MEHAFFEY, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you please state your name?
A. Mehaffey.
Q. Is your name John C. Mehaffey?
A. Right.
Q. You live at Decatur?
A. Yes, sir.

Q. Work for the L&N Railroad?

A. Yes, sir.

Q. Your job is what?

A. Relief Clerk.

Q. You circulate around and do two or three jobs on the off days of the other men?

A. Right.

Q. Do you remember a Monday in October, of last year, when there was a strike here at Boyles beginning the previous Sunday?

A. I remember the occasion.

Q. I mean do you remember the occasion?

A. I remember the occasion when they said that is what it was, yes, sir.

Q. Where were you working on that Monday?

A. I was working at Oakworth, that is the Yards at Decatur.

Q. Yards at Decatur?

A. Yes, sir.

Q. What job were you on that day?

A. Relief Yard Clerk.

Q. Now then, did any unusual occurrence happen there that afternoon?

A. Yes, sir.

Q. At Oakworth or Decatur Yards?

A. Yes, sir.

Q. All right, what was it?

A. A group of men came in there from somewhere, came into the office.

Q. Do you know who any of those men were?

A. I only knew one.

Q. Who was that?

A. He was related to my ex-wife, J. C. Bentley. I don't know that he was with them, he didn't come in with them, and he didn't leave with them, and he didn't stay with them.

Q. He was there though?
A. He was there that day, yes, sir.
Q. At the time they were in the office?
A. Yes, sir.
Q. Outside the office or inside?
A. I don't know about outside.
Q. Where did you see Mr. Bentley?
A. I saw him inside looking on the call board, looking the call board over.
Q. All right, what happened when they came in?
A. Some man came around there and started talking to me and asked me if I knew there was a strike on at Boyles, and I said I did not, and he said that he had made a call up there and told them, and he asked me if I didn't know it, and I said I did not.
Q. Did he ask you anything about where the man was that he had talked to?
A. I don't remember whether he did or not.
Q. All right?
A. It has been a year ago and I just don't remember.
Q. That was a year ago and your memory is not clear about that?
A. No, sir, not all the details.
Q. When he said he had made a call up there, and didn't you know about it, what did you say?
A. I told him I had heard rumors that there was something to that effect in Boyles, but we hadn't been notified about it.
Q. All right then, what happened?
A. Well, he said "Well, there is one," and he says "We would like for you all to honor it." And I said "Well, we haven't been notified of the strike", and he asked me who we were supposed to get our au-

thority from, and I told him our General Chairman in Louisville.

Q. Who is your General Chairman?

A. Mr. Sam Faulkner.

Q. Faulkner?

A. Yes, sir.

Q. What Union was that?

A. That is the Clerk's Union.

Q. The Clerk's Union?

A. Yes, sir.

Q. You hadn't heard anything about any strike from your Union?

A. No, sir, I hadn't been notified.

Q. All right. Now, did you say anything about where is the picket line, or why you should quit?

A. No, sir.

Q. What happened?

A. No, sir, he just told me he would like for us to—said they honored our strike and he would like for us to honor theirs. And I told him if they put ou a picket line that we would honor his strike, and he said there would be one up.

Q. He said there would be one up?

A. Yes, sir.

Q. Did you stay there and wait for a picket line?

A. No, sir, I did not.

Q. Why didn't you? What happened then?

A. We went out. I left the premises.

Q. Did you say anything about what other conditions you would go out under other than a picket line?

A. I told him there was only one thing that I understood other than a picket line, and that was a threat.

Q. All right, what did he say then?

A. And he said well—I don't know the exact words, but he said something to the effect that they was "Telling us to leave."

Q. They were telling you to leave?

A. They didn't want anybody working.

Q. How many of you were in the office at that time?

A. I don't remember, five or six I think.

Q. Five or six?

A. Besides them; of the local employees I would say five or six.

Q. All right now, when he said he was telling you to leave were you scared?

A. Yes, I was.

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did you then leave immediately?

A. Yes, sir, I did.

Q. What was the attitude of the man who was talking to you there, what was he doing?

Mr. Pettus:
We object to that, or to the attitude.

Q. Well, what was he doing?

The Court:
I sustain the objection.

Q. Did he have anything, did you notice anything about the man unusual?

A. Well, I could tell he was angry.

Q. Did you see anything about his hands?

A. Yes, he had his fist doubled up, had it down by his side.

Q. Had his fist doubled up?

A. It was closed up, I couldn't say it was doubled up. It was just closed up.

Q. Can you describe the man that was talking to you?

A. I could not, no, sir, I wouldn' attempt to.

Q. At the time he was talking to you and telling you he was telling you to get out of there, where was Mr. J. O. Bentley?

A. He was across the office, looking at what we call the switchmen's board over there, and I assumed that he was going to roll up there, I don't know.

Q. When the man first came in your office that afternoon what was the first thing he said, do you remember?

A. No, sir, I don't.

Q. You don't remember the first thing?

A. No, sir.

Q. Do you remember him pointing his finger at anybody?

A. No, sir, I don't.

Q. Do you remember him doing anything, any counting or anything of that kind?

A. No, sir, I don't.

Q. He just said that they were on strike and wanted you out?

A. Yes, sir.

Q. And you went out?

A. Yes, sir.

Mr. Simpson:
All right, that's all. You can have the witness.

Cross Examination.

By Mr. Pettus:
Q. How many people were in the office there, Clerks?
A. I believe there were two.
Q. Two? I mean together? Is that all the employees that were on duty?
A. No, sir, there was an operator.
Q. There were more than that, weren't there?
A. Beg your pardon?
Q. There were more than three, weren't there? Was Mr. Toone there too?
A. Didn't you say Clerks?
Q. I asked you Clerks first, and then I want everybody.
A. He is not a Clerk there. He was there, yes, sir, Mr. Toone.
Q. How many L&N employees were on duty there?
A. There was Mr. Hardwick, our Agent, was there, and Mr. Toone.
Q. Just give me the number, if you know.
A. I believe five.
Q. Five?
A. Yes, sir.
Q. And during this discussion was a newspaper brought out?
A. Yes, sir, it was.
Q. It was?
A. Yes. It was a picture, I didn't see that it was a newspaper. I saw nothing but the picture.
Q. You saw a picture?
A. That's all.

Q. Did it have reference to the walkout in Birmingham?

A. It had a picture. I didn't read anything on it. It had a picture of what I assumed was a strike.

Q. Here in Birmingham?

A. Yes, sir. I don't know about Birmingham, I just saw that, that's all.

Q. How long were the men there in the room?

A. I would say approximately 15 or 20 minutes.

Q. 15 or 20 minutes?

A. Yes, sir.

Q. And during the course of the time that they were there and towards the end of it, didn't one of you there in the room suggest that they go down to the freight house and carry that newspaper down to the freight house, wasn't that said there?

A. I don't know about the newspaper, but the suggestion was made or the question was asked, were they going to the freight house.

Q. The question was asked?

A. Yes, sir.

Q. By one of the employees up there?

A. Yes, sir.

Q. At Decatur, wasn't it?

A. Yes, sir.

Q. Didn't some one there say that they would be interested in learning about it down at the freight house, about the walkout in Birmingham?

A. No, sir, I don't remember that, I don't remember him saying that, but he said something about they were going to the freight house.

Q. Going to the freight house?

A. Yes, sir.

Q. Didn't you hear somebody there suggest that they take the newspaper down to the freight house, or suggest they go down to the freight house?

A. Yes, sir, I have answered that.

Mr. Pettus:

All right, that's all.

Mr. Simpson:

That's all.

The Court:

All right, this witness can be excused unless there is objection.

Mr. Pettus:

We excuse him.

(Witness excused.)

The Court:

Gentlemen, remember the Court's warning about discussing the case with anybody or among yourselves. Be back in the morning at 9:00 o'clock.

(Whereupon, at 4:45 p. m. an adjournment was taken until 9:00 a. m., Wednesday, September 26, 1956.)

Wednesday, September 26, 1956, at 9:00 A. M.

The Court:

All right, you may call your next witness.

Mr. Simpson:
Mr. LeCroix.

THOMAS E. LE CROIX, JR., called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Is this Mr. Thomas E LeCroix, Jr.?
A. Yes, sir.
Q. Where do you live?
A. Decatur, Alabama.
Q. Who do you work for?
A. I work for the Louisville & Nashville Railroad.
Q. What do you do?
A. I am a Clerk.
Q. Do you belong to one of the Brotherhoods?
A. Yes, sir.
Q. Which one?
A. Brotherhood of Railway and Steamship Clerks.
Q. Were you on duty at Decatur for the L&N Railroad Company on the 24th of October, last year?
A. Yes, sir.
Q. That was on a Monday?
A. Yes, sir.
Q. Were you in the Yard Office or in the Freight Office?
A. Yard Office.
Q. The Yard Office is the one closest to Birmingham?
A. Yes, sir.

Mr. Simpson:

May it please the Court, there is a little question of testimony that will arise here. This gentleman I am sure doesn't recognize Mr. Pennington's voice, but a man called him and said "This is Pennington", and Pennington later came.

I am submitting this testimony on the theory that it is all tied in together.

Q. Do you know W. F. Pennington's voice?

A. No, sir, I don't.

Mr. Pettus:

We object to that.

Q. On the telephone?

A. No, sir.

The Court:

Just ask the question and we'll see.

Q. Did you get a telephone call, long-distance on that date?

A. Yes, sir.

Q. Where was it from?

A. Birmingham?

Q. From Birmingham?

A. Yes.

Q. Was it on the Company phone or on the Southern Bell phone?

A. On the Bell phone.

Q. Southern Bell Telephone?

A. Yes, sir.

Q. What occurred when you answered your call?

Mr. Pettus:
We are going to object to that.

The Court:
I overrule the objection for the time bei

Mr. Pettus:
Incompetent, irrelevant, and immaterial.

A. Well, I don't remember exactly the exact words, but he wanted to know who I was. I gave him my name, and he asked if we were working up there, and I told him we were on duty.

Q. Did the man say who this was?

Mr. Pettus:
We renew our objection on the same ground.

Q. Go ahead and tell it.

The Court:
Overruled.

A. Yes, sir, he told me who he was.

Q. Tell us what he said.

A. He said he was W. F. Pennington, of Birmingham.

Mr. Pettus:
We move to exclude that answer, hearsay.

The Court:
Did you know who he was?

The Witness:
No, sir.

The Court:
Did you recognize the voice?

The Witness:
No, sir.

Mr. Simpson:
You see the testimony shows Mr. Pennington did come there when he said he would. I would like for the Court to hear this testimony before you rule.

The Court:
All right, I will hear the testimony and see.

Q. Go ahead and state just what happened.
A. Well, he asked me were we working up there, and I told him we were on duty. And he asked me did I know, or did we know there was a strike in Birmingham, and I told him we didn't, we didn't have anything on it. we had heard the rumor but we didn't have anything on it.
Q. Yes, sir
A. Nothing to back it up.

Mr. Pettus:
We move to exclude that answer on the grounds stated.

The Court:
Overruled.

Q. What else did he say then? Just finish the conversation.

A. Then he told me then they would be up there, I don't know how long, a coupie of hours or so, that he didn't want to find us up there working when they got there.

The Court:

Did a man by the name of Pennington identify himself as he came up later?

The Witness:

I didn't see him.

Mr. Simpson:

That testimony yesterday already shows that W. F. Pennington came in up there. Those people who knew him testified he did come in. As a matter of fact, there is no denial that he did.

The Court:

I don't think that is sufficient. I sustain the objection and exclude it, gentlemen. That is excluded from your consideration.

Mr. Pettus:

We except—excuse me, Your Honor, did you exclude that?

The Court:

Yes, sir.

Mr. Pettus:

Pardon me.

The Court:
You are excused.

(Witness excused.)

The Court:
All right, your next witness.

Mr. Simpson:
Call Mr. Tec Wilder.

T. B. WILDER, called as a witness on behalf of the Plaintiff being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Is this Mr. T. B. Wilder?
A. That's right.
Q. Where do you live?
A. I live on 39th Court in Birmingham.
Q. Live where?
A. On 39th Court in Birmingham.
Q. 39th Court, Birmingham?
A. That's right.
Q. Mr. Wilder, be sure and talk out loud enough so everybody can hear you, please, sir.
A. Yes, sir.
Q. Who do you work for?
A. L&N Railroad.
Q. How long have you worked for the L&N Railroad?
A. Since 1923.
Q. What do you do for them?
A. Engineer.

Q. On what Division?
A. S&NA, Birmingham Division.
Q. You run out of Birmingham?
A. Yes, sir.
Q. Are you in freight or passenger service?
A. Both.
Q. Both?
A. Yes, sir.
Q. Do you recall the occasion last October when there was a strike or work stoppage here?
A. Yes, sir.
Q. On the L&N?
A. Yes, sir.
Q. Do you know when that started, what day of the week?
A. Yes, sir.
Q. We won't try to get the day of the month.
A. It started on Sunday.
Q. On a Sunday?
A. Yes, sir.
Q. Did you go on duty on that Sunday?
A. Yes, sir.
Q. Where did you go?
A. I went to Montgomery.
Q. On a regular assignment?
A. On a chain gang freight.
Q. On a chain gang freight?
A. Yes, sir.
Q. What time did you get to Montgomery on that Sunday?
A. Well, it was approximately 1:30 or 2:00 o'clock Monday morning, around that time.
Q. Was there anything unusual, did any strike or work stoppage occur, was there any work stoppage or strike in Birmingham when you left?

A. Not in Birmingham when I left, no, sir.

Q. What time did you leave?

A. Well, we was called that afternoon for, oh, it was around 5:00 or 5:30, or 4:30 or 5:00, something like that in the afternoon. We got out of the Yard befor anything happened.

Q. When you got to Montgomery you say it was around 1:00 o'clock Monday morning?

A. Around that time, yes, sir.

Q. On Monday morning?—

A. Yes, sir.

Q. When you got off duty where did you go?

A. We went to the hotel and went to bed.

Q. All right now, how did you happen to wake up, or what time were you awakened in the morning?

A. Well, Monday morning I woke up around, oh, the usual time, 7:00 or 7:30, something like that.

Q. And did you hear anything from the Railroad calier?

A. No, sir, not Monday.

Q. Did anything unusual happen there Monday?

A. No, sir.

Q. You stayed around the hotel and around town, did you?

A. That's right.

Q. When were you due to go back, or were you just on call?

A. Call.

Q. It was a question of calling, or when you were called?

A. When I was called. We were due to go back whenever they called us.

Q. Whenever they called you?

A. Yes, sir.

Q. You were not called on Monday?

A. No, sir.

Q. Where did you stay Monday night?

A. Gary Hotel, at the same place.

Q. How far is the Gary Hotel from the Yard Office there in Montgomery?

A. Well, approximately a mile or a mile and a quarter, something like that.

Q. A mile or a mile and a quarter?

A. Yes, sir.

Q. Do they send a caller when they call a crew, do they send a caller down to the Gary or do they call you on the telephone?

A. They send a caller down there part of the time, and part of the time, if we are sitting around there they call us over the telephone.

Q. Does the Gary Hotel specialize in any particular class or group of patrons?

A. They specialize in us railroad men. We have our certain place in there that we stay. No one stays in there except the railroad men.

Q. Railroad men?

A. Yes, sir.

Q. On Tuesday morning, what were the circumstances of your getting up then?

A. The Engineer, R. W. Whitney, came upstairs and woke me up.

Q. Engineer who?

A. R. A. Whitney.

Q. Whitney?

A. Yes, sir.

Q. All right.

A. R. A. Whitney came upstairs and woke me up. I had slept upstairs because I had had an awful cold, and I didn't want to sleep back in the other place on account of keeping the other men awake. I had

coughed all night. And he came upstairs and woke me up and told me to get up, that he had laid off, and they were fixing to run a Calera turnaround.

Q. Calera turnaround?

A. Yes, sir.

Q. Now, that means a train that would go as far as Calera and then turn around and come back to Montgomery?

A. That's right.

Q. All right.

A. I said "Well, I'll be right up in a few minutes", and I got up and messed around, washed, and came on downstairs then after he had woke me up.

Q. Yes, sir.

A. Of course, after I got downstairs then why, of course, they was tallking pro and con, between each other down there.

Q. When you came down in the lobby who did you see?

A. Well, there was the Engineer Mackin, Whitney, and Brown, Fireman Brown, A. C. Dismukes, A. E. Hicks, and J. B. Byram.

Q Dismukes, Byram and Hicks among the others?

A. That's right.

Q. L&N people who were down there?

A. Yes, sir.

The Court:

That was Tuesday morning, was it?

The Witness:

Yes, sir.

Q. You, of course, knew Mr. Dismukes, Mr. Byram, and Mr. Hicks?

A. That's right.

Q. Who were they?

A. Sir?

Q. What did they do for the L&N Railroad?

A. They are fireman.

Q. They are fireman?

A. Yes, sir.

Q. All right. Now, did either one of those three men have any conversation with you?

A. They was all talking to the—to each other there, and telling me they was aiming to call me, and that I had better lay off.

Q. Who said that to you?

A. Well, all of them was talking.

Q. All of them?

A. Yes, sir. Mr. Dismukes and Hicks and Byram all was talking.

Q. What did they say to you now?

A. They told us we had better lay off; we had better lay off. They were fixing to run a Calera turn-around, and if I wasn't going, I had better lay off.

Q. All right.

A. They was talking though, and I told them that the engineers wasn't on no strike, and if there wasn't any picket line that we had to go.

Q. Who was talking to them besides you?

A. Engineer Mackin, he was talking to them.

Q. Mackin?

A. Mackin, yes, sir.

Q. Engineer Whitney had already laid off, however?

A. He had already laid off, and he came and woke me up, so he said.

Q. How long did that argument and discussion go on down there?

A. Well, in about approximately 20 or 30 minutes, why the call boy came up there to call me.

Q. Who was the call boy, do you know his name?

A. Earl Webb, a colored fellow.

Q. You have seen him out here, haven't you?
A. Yes, sir.
Q. All right. Did he give you a call?
A. He gave me a call.
Q. What was the call?
A. Call for Calera turnaround.
Q. To leave Montgomery about when?
A. 8:00 or 8:30.
Q. What did you do when you got that call?
A. When I got that call, why they was telling me not to go, they were telling me I had better not go, that if I went, why, somebody would take a pot shot at me.
Q. Who said if you went somebody would take a pot shot at you?
A. Well, J. B. Byram told me that.

Mr. Pettus:
May it please the Court, we are going to object to that. It is not any of the Defendants being tried here that this conversation took place with.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Give Mr. Byram's exact words when he said that somebody would take a pot shot at you.
A. Well, he said not go up the road on that run, he said "If you do, somebody is liable to take a pot shot at you up the road", he said "If you go, I'll place you in the class of Ralph Graves."

Q. And is Ralph Graves, was that considered an undesirable class to be placed in?

A. Ralph Graves is the man that worked—

Mr. Pettus:

We object to anything about what Ralph Graves was.

The Court:

Overruled.

Mr. Pettus:

We except.

A. Ralph Graves is the man that worked during the 28 day strike.

Q. 58 day strike?

A. Yes, sir.

Mr. Pettus:

We move to exclude that.

Q. That was in the early part of 1955?

A. Yes, sir.

Mr. Pettus:

We move to exclude the answer on the same ground.

The Court:

Do what?

Mr. Pettus:

Move to exclude his answer on the same ground.

Q. He was the man who worked during the 58 day strike here last year?

The Court:
Overruled.

Mr. Pettus:
We except.

A. Yes, sir.

Mr. Simpson:
All right.

Q. Now then, at the time Byram said that, use his exact language, please, sir, if you haven't already done so. If it is profane, use profanity, whatever it is, use his exact language.

Mr. Pettus:
We object to that as repetition. He just said what Byram said.

Mr. Simpson:
It may not be repetition.

The Court:
Overruled.

Mr. Pettus:
We except.

A. Well, what Byram said was, Byram didn't use any much profanity at that time himself. I mean Byram, he didn't say anything. All he told me was

that if I did, I would be placed in a class like I said, and somebody would take a pot shot at me up the road.

Q. All right. Now then, what did you do after that statement was made to you?

A. After that statement was made to him, I told him—

Q. No, made to you, after that statement was made to you what did you do then Mr. Wilder?

A. After that statement was made to me I told him that we would have to, that we didn't have any strike, and the engineers would have to go if they got a fireman to go with us.

Q. Did you communicate with anybody about that?

A. Yes.

Q. Anybody with the Railroad?

A. Yes. After I done that, why we talked to them and tried to reason with them, I'll say.

Q. That is "we", now who do you mean?

A. Well, myself and Mr. Mackin and—

Q. The engineer?

A. The engineer, yes, sir.

Q. Talked to who?

A. We talked to Byram and Hicks and Dismukes.

Q. These were firemen from Birmingham?

A. Yes, sir, they were all around there, and then the call boy, called Slim, Dismukes was supposed to go with me, and he told the call boy that he had already laid off, and the call boy called Mr. Davidson back and told him that I was ready to go but he would have to get a fireman.

And he told me to hang around, that he would call me back in a few minutes, and let me know what to do.

And in a few minutes, why he called me back then and told me to come on down that he would get me a fireman. And I started on downstairs, or down to the head of the stairs, and just as I got at the head of the stairs why I met Charlie Hartselle, another engineer that is on a passenger run.

Mr. Pettus:
Who is that, Charlie who?

The Witness:
Charlie Hartselle.

Mr. Pettus:
Hartselle?

Mr. Simpson:
Hartselle, H-a-r-t-s-e-l-l-e?

The Witness:
Yes, sir.

Q. All right.

A. And I said, "Mr. Hartselle". I said "You are older than I am". and I said "I want some advice." I said "I am called for a Calara turnaround, and I want to know whether to go or not." He said "Well, Ted, we are not on strike, and we have to protect our rights and our job", and he said "There is not anything for you to do except go on." I said "Well, that's what I thought."

And about that time Mr. Dismukes came up and just stepped in between us and pointed his finger like that (illustrating) at me, and he said "God damn you, I said for you not to go."

So Mr. Hartselle said "Well, Ted", he said "Under the conditions and the way things is, and you have been threatened", he said "I would go back and call Davidson and tell him that you had been threatened, and mark you off sick." and that I did.

Q. Davidson was the one that called the crew?

A. He was the caller then.

Q. You called the caller down there, Mr. Davidson, and told him that you had been threatened?

A. That's right.

Q. And wouldn't go?

A That's right.

Q. Now then, did you see Mr. Dismukes after that, that morning?

A. He was around in the lobby there and was using the telephone around there calling someone.

Q. Do you know who he called?

A. I don't know who he was calling. He was talking to some one about getting a car.

Q About getting a car?

A. Yes, sir, that's right.

Q. An automobile, you mean?

A. An automobile.

Q. Did you hear him make any long-distance call?

A I did not.

Q. Did you hear him make a local call other than to get the automobile?

A. I did not.

Q. Now then, did Dismukes say anything to you about what he proposed to do before he left Montgomery?

A. About what he was supposed to do?

Q. What he proposed or was going to do before he left Montgomery.

A. Well, he was talking around there, and was just turned around, talking to the whole bunch around there, and he walked over and leaned up against the wall, and he said "Well, I'm going to pull the whole God damn bunch out before I leave here."

Q. Before he left Montgomery?

A. Before he left Montgomery.

Q. Going to pull the whole God damn bunch out before he left there?

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. When you called up and laid off, what did you tell the man you talked to?

A. I told Mr. Davidson that I had been threatened and mark me off sick.

Q. Did you make the whole statement that you had been threatened, and mark you off sick?

A. I did.

Q. Is that on the book?

A. On the book?

Q. Yes.

A. I don't know.

Q. Do you know whether the book is up here or not?

A. No, I don't.

Q. But you told him to mark you off sick?

A. That's right.

Q. Then what did he say?

A. He said "O. K."

Q. You did not report that day?

A. No, sir.

Q. Do you know whether any trains ran out of there that day?

A. I do not.

Q. Out of Montgomery. After this remark of Mr. Byram's—what was that remark that you said earlier in the game here, you testified about?

A. The one where he said "Take a pot shot."

Q. He said "Somebody", did he?

A. He said somebody may take a pot shot. He said "Don't go. If you do", said "Some one will take a pot shot at you up the road, and you'll be classed in the class with Ralph Graves."

Q. He didn't say who it was or anything?

A. Going to take a pot shot?

Q. He didn't say who was going to take a pot shot?

A. No, sir.

Q. After that conversation with Byram though you were still on your way to go, were you not?

A. That's right.

Q. How long was it after you had the conversation with Byram before you decided not to go?

A. Oh, three or four minutes.

Q. Three or four minutes?

A. Maybe five.

Q. Were you actually on your way out?

A. Yes, sir.

Q. When you talked to Dismukes the last time?

A. Yes, sir.

Q. How many railroad men were in the hotel at that time?

A. You mean in the lobby?

Q. Yes, in the lobby.

A. Well, there was three, and let's see, three, four, five, six, or seven; six of us I know. Let's see,

there was three, myself, Mackin is four, and Brown is six. There was six of us, I know.

Q. Six of you you know?

A. Yes.

Q. How many of them were engineers?

A. Let's see, there was several of them there that was switchmen. Well, there was Mackin and myself and Whitney at that time. Of course, I met Mr. Hartselle as I started out. He is an engineer.

Q. How many engineers do you say were there now?

A. Well, there was myself, one, and Mackin is two, Whitney is three, and then I met Mr. Hartselle, is four.

Q. Four?

A. There was four of us.

Q. How many firemen were there?

A. There was Hicks, Dismukes, Byram, and Brown off of the south end.

Q. Who was that?

A. Brown.

Q. Brown off of the south end?

A. Yes, sir.

Q. By the "South end" you mean Mobile?

A. That is the Mobile Division.

Q. The Mobile Division?

A. South of Montgomery.

Q. Did you do any work on that Tuesday?

A. No, sir.

Q. You didn't do any work on Tuesday?

A. No, sir.

Q. You laid off sick?

A. I laid off sick and came home on the bus.

Q. Did you do any work Wednesday?

A. Let's see, Wednesday.

Q. The following Wednesday?

A. I don't know whether I was called on that Wednesday or not, because I was back here Wednesday. I don't remember whether I got out of here.

Q. Do you know when the walkout was over?

A. The walkout was over, they went back to work Wednesday I think, didn't they?

Q. Well, I am asking you. You are the man that is testifying. Is that your recollection that they went back Wednesday?

A. I wasn't paying much attention because I was at home. I think it is Wednesday when they went back, Wednesday night, I think is when it was.

Q. When you got back Wednesday—were you a member of the Firemen's Organization?

A. I came back Tuesday.

Q. You came back Tuesday?

A. Yes.

Q. You spent the night at home?

A. That's right.

Q. Did you spend Wednesday at home?

A. That's right.

Q. What organization are you a member of?

A. Engineers.

Q. Brotherhood of Railroad Engineers?

A. That's right.

Q. In other words, that is a Union just like the Firemen's Union?

A. The Firemen, that's right.

Q. Is that right?

A. That's right.

Q. When you came back to Birmingham Tuesday night did you talk to any of the L&N lawyers about what had occurred at Montgomery?

A. No, sir.

Q. Did you talk to any of the L&N Claim Agents?
A. No, sir.
Q. Did you talk to Mr. Robey, the ex-FBI man?
A. No, sir.
Q. He hadn't been employed by them at that time, had he, by the L&N?
A. I don't know.
Q. You don't know about that?
A. No.
Q. Did you talk to Mr. Laney about it?
A. I won't say, because I don't recall talking to him.
Q. You won't say you didn't?
A. I won't say I did or I won't say I didn't.
Q. When was the first time you talked to Mr. Laney about it?
A. I don' tknow.
Q. You don't know?
A. I don't remember.
Q. Did you talk to him that week about it?
A. I don't remember.
Q. Have you been paid for that day that you laid off sick?
A. No, sir.
Q. That Tuesday?
A. No, sir.
Q. Have you been paid by the Railroad?
A. No, sir.
Q. You have never been paid by the Railroad?
A. No, I haven't been paid for it.
Q. Did you get paid for Wednesday?
A. If I worked I did; if I didn't, I didn't get paid.
Q. Do you recall whether you worked or not?
A. No, I don't.
Q. You don't recall whether you did or not?

A. No, I don't.

Q. According to your recollection you may have worked on Wednesday?

A. I might have got out that night, I don't remember.

Q. You just won't say whether you did or not?

A. No, sir.

Mr. Pettus:

All right, that's all.

Re-Direct Examination.

By Mr. Simpson:

Q. He asked you about talking to Mr. Laney. Who is Mr. Laney?

A. He was Local Chairman for the Engineers.

Q. Your Local Chairman?

A. Yes, sir.

Q. Of your Union?

A. Yes, sir.

Mr. Simpson:

That's all. Come down. Call Mr. Brown. May Mr. Wilder be excused, Your Honor?

The Court:

Yes, you may be excused unless there is objection.

Mr. Pettus:

We will excuse him.

(Witness excused.)

THOMAS C. BROWN, SR., called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Is this Mr. Thomas C. Brown, Sr.?

A. Yes, sir.

Q. Where do you live, Mr. Brown?

A. Evergreen, Alabama.

Q. How far south of Montgomery is Evergreen?

A. About 80 miles.

Q. Who do you work for?

A. Louisville & Nashville.

Q. How long have you been working for the L&N?

A. 14 years and 10 months.

Q. What do you do for them?

A. Extra conductor, and trainman.

Q. Do you belong to either of the Brotherhoods?

A. Yes, sir, Brotherhood of Railroad Trainmen.

Q. Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. Have you held any office in that Brotherhood?

A. No, sir.

Q. Do you remember where you were on Monday, I mean on Tuesday, October 25, 1955? To fix that date in your mind, that is during the period there was a strike or work stoppage here in Birmingham on the L&N Railroad?

A. Yes, sir.

Q. Where were you on Tuesday morning of that work stoppage?

A. I arrived in Montgomery from Mobile at approximately 5:00 o'clock.

Q 5 o'clock a. m.?

A. Yes, sir.

Q. 5:00 o'clock a. m. on Tuesday?

A. Yes, sir.

Q. What run did you have?

A. Well, it is a run we call the House Freight Run.

Q. What was your work?

A. I had worked the night before from Mobile.

Q. What were you doing on that run?

A. A brakeman.

Q. As a brakeman?

A. Yes, sir.

Q. Now, about what time did you get off duty there in Montgomery Tuesday morning?

A. About 5:00 o'clock the best I can remember.

Q. Where did you go?

A. I went to my room.

Q. Where was your room?

A. Gary Hotel.

Q. At the Gary Hotel?

A. Yes, sir.

Q. That is sort of a stopping place for the railroad men, isn't it?

A. More or less, yes, sir.

Q. About what time did you get up to the hotel?

A. Between 5:30 and 6:00 o'clock.

Q. Who did you see when you got up there in the lobby that you knew?

Mr. Pettus:

We object to this on the ground none of these Defendants here on trial were involved in any incident that occurred in Montgomery.

The Court:
I presume he is going to connect it up.

Mr. Simpson:
Mr. Dismukes and these gentlemen were all part of the firemen's movement, Your Honor, yes, sir.

The Court
Overruled.

Mr. Pettus:
We except.

Q. Can you tell us that?
A. Well, I think—I saw Mr. Moore.
Q. All right.
A. He is an engineer from Birmingham.
Q. A Mr. Moore?
A. Yes, sir.
Q. All right.
A. I saw Mr. Wilder, also an engineer from Birmingham.
Q. Is that the gentleman that just left the stand here?
A. Yes, sir.
Q. All right, sir.
A. I saw Mr. Hartselle, an engineer from Birmingham.
Q. Anybody else?
A. I saw Mr. Dismukes.
Q. All right.
A. A fireman from Birmingham, and several other railroad men that I did not know by name.
Q. All right. Now, did you hear any conversation by Mr. Dismukes while you were there in the lobby that morning?

A. Well, yes, sir.

Q. Did you hear any statements made by Mr. Dismukes?

A. There was general discussion.

Q. Just tell us what occurred there in the lobby that morning.

A. There was a general discussion about the strike that had been pulled in Birmingham.

Mr. Pettus:

We want to object to the conversation on the ground that none of the Defendants here were present at that time.

The Court:

Overruled.

Mr. Pettus:

We except.

A. And I understood that all of the firemen that were in Montgomery from Birmingham at that time had laid off.

Q. All right.

A. Shortly after I got there a call boy came from the shop, colored call boy, by the name of Webb, came upstairs and called Mr. Wilder for a Calera turn, and he accepted the call. And he went to the telephone and called the chief caller and told him that he accepted the call, under the conditions if he had a qualified fireman, that he wouldn't go with just anybody. And I guess—I didn't hear Mr. Davidson's words, but I guess that he said—

Mr. Pettus:
We object to what he said.

Mr. Simpson:
You can't give us what he said.

The Court:
I sustain the objection.

A. Well, anyway he said he would accept the call.
Q. He said he would accept the call?
A. Yes, sir.
Q. Mr. Wilder has already told us what Mr. Davidson said.
A. After he accepted this call, Mr. Dismukes asked him, says "Wilder, don't go."
Q. Mr. Dismukes said that to Wilder?
A. Yes, sir, he says "Dismukes, I've got to go or quit my job", he says "Well, by God I says don't go." Well, he says "I've got to go", says "You boys haven't got a picket line over there, the boys here at Montgomery are working", and says "I've got to go or resign."

So he walked to the foot of the stairs and had a conversation with Mr. Hartselle and I believe Mr. Moore. During their conversation they called me up there and Mr. Wilder asked me what would I do in the case. I told him, I says "Well, Ted, the only thing you can do is to go." I says "We haven't struck down here", I says "There's no picket line over there to keep you from going", I says "You have either got to go or quit."

So he told Dismukes that he would have to go, and this other fellow, I couldn't tell you his name, because I didn't know him—

Q. He was one of these Birmingham firemen?

A. One of these Birmingham firemen.

Q. Yes, sir.

A. He said "Well, God damn you, go; somebody will take a pot shot at you before you get back."

Mr. Wilder shortly went to the telephone and called Mr. Davidson, the chief caller, and told him that his life had been threatened, and he was afraid to go, to lay him off sick.

Then after he done that, Mr. Dismukes says "Well, by God, its time to close down Montgomery, I'll call Ed Kelly and see if he can furnish me some men." Mr. Kelly is Local Chairman for the firemen.

Q. At Montgomery?

A. Yes, sir, on the M&M Division, "And see if he can furnish me six or eight men to help me close down Montgomery."

He did call. Whoever he called I don't know, but he said "Ed I want six or eight men I can depend on, I'm closing down Montgomery." What Ed said, or who he was talking to, I do not know. Anyway, shortly after that they left, three of these firemen, Mr. Dismukes and two others, and that's the last of the conversation that I heard.

Q. All right. Now then before he left did you hear him put in any long-distance call?

A. Yes, sir, before he left he put in three or four calls to Birmingham.

Q. Did you hear his end of this Birmingham call, those Birmingham calls?

A. Yes, sir.

Q. What did he say to Birmingham?

A. He told whoever he was talking to that he needed some men in Montgomery.

Mr. Pettus:
We object to that, may it please the Court, incompetent, irrelevant, and immaterial.

The Court:
Overruled.

Mr. Pettus:
The party on the other end of the line not identified, hearsay, not binding on the Defendants in this case.

The Court:
Is that what he heard him say over the telephone?

Mr. Simpson:
Yes, sir.

The Court:
Overruled.

Mr. Pettus:
We except.

A. He said he needed six to eight men there, he was fixing to close down Montgomery and he wanted some men to help him.

Mr. Pettus:
We move to exclude that answer on the same ground.

The Court:
Overruled.

Q. About what time did they walk out of the hotel, that is Mr. Dismukes and the other two firemen from Birmingham?

A. I guess it was between,—approximately 7:00 o'clock.

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Brown, you have discussed your testimony with a number of people, haven't you?

A. Not too many, no, sir.

Q. Well, several, haven't you?

A. Well, I wouldn't say several, no, sir.

Q. Well, you did, right after it happened, you discussed it with some one, didn't you?

A. Why I don't recall, no, sir.

Q. Have you discussed it with Mr. Wilder?

A. Yes, sir, I have.

Q. Been over it with him several times, have you?

A. Not over once or twice.

Q. Not over once or twice?

A. No, sir.

Q. Have you been over it with anybody else?

A. No, sir.

Q. How about Mr. Robey, the FBI man, ex-FBI man, have you been over it with him?

A. No, sir.

Q. You know him, don't you?

A. Yes, sir.

Q. You have been over it several times with him, haven't you?

A. No, sir. I have been over it one time with him. He came to Montgomery and interviewed me.

Q. He interviewed you at Montgomery?

A. Yes, sir.

Q. You have been over it one time with him?

A. Yes, sir.

Q. Are you working for the L&N Railroad now?

A. Yes, sir.

Q. That is the L&N you are working for?

A. Yes, sir.

Q. Were you paid for this entire time down there that you testified about, Tuesday and Wednesday, down at Montgomery?

A. No, sir.

Q. Did you receive your pay?

A. No, sir.

Q. You haven't received that?

A. Not as yet.

Q. You expect to receive it, do you?

A. Yes, sir.

Q. It has been promised to you?

A. That is in our agreement between the Brotherhood of Railroad Trainmen and the L&N Railroad that we will receive pay for interviews concerning Court procedures.

The Court:

You were talking about the time he was off?

Mr. Pettus:

Yes.

Q. I was talking about the time you were off there in Montgomery.

A. That was my off day, yes, sir.

Q. That was your off day?

A. Yes, sir.

Q. Now, are you positive that somebody down there on this occasion at the Gary Hotel told Mr. Wilder that some one was going to take a pot shot at him?

A. Sir?

Q. Was that statement made?

A. Ask that question again, please, sir.

Q. Are you positive that somebody at the Gary Hotel told Mr. Wilder that somebody was going to take a pot shot at him?

A. Yes, sir.

Q. If he made that run?

A. Yes, sir.

Q. And it was right after that that he went to the phone and laid off?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. You are absolutely positive about that?

A. I am positive.

Q. It was right after that statement?

A. Yes, sir.

Q. Now, as a matter of fact, who made that statement to him?

A. I couldn't call the man by name.

Q. Well, it wasn't Dismukes, was it?

A. No, sir.

Q. Don't you know that after that statement was made, about the pot shot, that Mr. Wilder stayed around and discussed it further with them, and stayed there 10 or 15 minutes before he made any call?

A. No, sir. No, sir, he did not.

Q. He did not?

A. No, sir.

Mr. Pettus:
All right, that's all.

Mr. Simpson:
Come down, Mr. Brown. Thank you, sir. May Mr. Brown be excused?

The Court:
He may be excused unless there is objection.

Mr. Pettus:
We excuse him.

(Witness excused.)

Mr. Simpson:
Call Mr. Kelly.

EDDIE B. KELLY, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you state your name to the Court and jury, please, sir, Mr. Kelly?
A. My name is Eddie Boyd Kelly, who resides at 324 East Patton.
Q. East what?
A. Patton, Montgomery, Alabama.
Q. P-a-t-t-o-n?
A. Right.
Q. Who do you work for, Mr. Kelly?

A. I work for the L&N Railroad.

Q. In what capacity?

A. Locomotive fireman on the M&M Division.

Q. That is south of Montgomery?

A. South of Montgomery.

Q. How long have you worked for the L&N?

A. 14 years last May.

Q. Are you amember of the Firemen's Union?

A. I am, sir.

Q. That is the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. Do you hold an office in the Firemen's Organization?

A. Yes, sir, I do.

Q. What are you?

A. Local Chairman.

Q. You are Local Chairman of the Seniority District there on the M&M Division?

A. Yes, sir.

Q. And were you that in October, of last year?

A. Yes, sir.

Q. I believe that is the same office that Mr. Otts over here holds in Birmingham on the main line Seniority District here?

A. Yes, sir.

Q. In the same Union?

A. Yes, sir.

Q. All right. Now then, did you, or were you in Montgomery on the morning of Tuesday, of this Birmingham strike?

A. I was.

Q. Where were you?

A. I was at home.

Q. Now, there has been evidence here that a telephone call was made to you, Mr. Kelly.

Mr. Pettus:
We object to that, as to the statement of what the evidence is, may it please the Court.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. We have heard only one end of a conversation. Now, did you receive a telephone call that morning?
A. Yes, sir.

Mr. Pettus:
We object to that as incompetent, irrelevant, and immaterial.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did the man who called you tell who he was?
A. No, sir.
Q. Will you tell us about what time of the morning that occurred?
A. It was around 8:00 o'clock of Tuesday morning on the 24th I believe it was,—25th.
Q. Tuesday morning, whether the 24th or 25th?
A. Yes, sir.
Q. We all get confused on the day of the month?
A. That was on Tuesday morning.

Q. Tuesday morning?
A. Yes, sir.
Q. What did this caller say to you?

Mr. Pettus:
We object to that as incompetent, irrelevant, and immaterial.

The Court:
Is this the gentleman, is Mr. Dismukes supposed to have called this witness?

Mr. Simpson:
Yes, sir.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Go ahead and tell what this conversation was.
A. The party who was calling did not identify himself. I asked that he give his name, and he declined to do so. He asked for three or four or five men I believe it was to assist him. I told him I didn't have any.
Q. To assist him for what?
A. To close the shop up, I presume.

Mr. Pettus:
We object to what he presumes.

Q. You can't presume.
A. All right.

Q. You understood what he wanted the men for, didn't you?

A. Yes, sir.

Q. All right, you just tell the jury what he asked you for.

A. He asked me for four or five or six men.

Q. Five or six men?

A. To assist him in closing up the shop.

Q. Did he say anything about men he could depend on or anything of that kind?

A. Well, I—

Mr. Pettus:

We object to leading the witness.

Mr. Simpson:

I admit it is a little leading.

The Court:

I sustain the objection.

Mr. Simpson:

But I am trying to save time.

A. I believe that is correct, yes, sir.

Q. Is that your best recollection about it, Mr. Kelly?

A. Yes, sir.

Q. Now then, after that conversation did you put in a long-distance telephone call?

A. After a number of calls, after I received a number of calls from the members of my Lodge I called the General Chairman at Louisville.

Q. That is the Firemen's General Chairman?

A. Yes, sir.

Q. What is his name?
A. Jake Paschal.
Q. Jake Paschal?
A. Yes, sir.
Q. And he lives in Louisville?
A. Yes, sir.
Q. And he is the man that you report to?
A. Yes, sir.
Q. He is the man immediately over you on the L&N System?
A. Yes, sir.
Q. In the Brotherhood Organization?
A. Yes, sir.
Q. All right. Now then, did you discuss this work stoppage or strike with Mr. Paschal?
A. Yes, sir, I asked him about it.

Mr. Pettus:
We object to that. It is hearsay, incompetent, irrelevant, and immaterial.

The Court:
I sustain the objection to that question.

Mr. Simpson:
I want to ask him, may it please the Court, what Mr. Paschal stated, whether or not this was a legal or illegal work stoppage.

Mr. Pettus:
We object to any conversation with some third party. That is under the hearsay Rule if anything ever was.

The Court:
I sustain the objection to that.

Q. About what time of day did you call Mr. Paschal?

Mr. Pettus:
We object to that. The Court has just sustained the objection.

Mr. Simpson:
I want to fix the time.

The Court:
You are not going into the conversation?

Mr. Simpson:
No, sir.

The Court:
I overrule the objection.

Q. The Court says you may answer.

Mr. Pettus:
We except.

A. Well, I would say it was around possibly 8:15 or 8:30.
Q. 8:15 or 8:30?
A. Yes, sir.
Q. In the morning?
A. Yes, sir, that is the first time I called.
Q. You called him again?
A. Yes, sir.

Q. Did you call him twice?

A. Yes, sir.

Q. All right. Now then, you say you received a good many calls from firemen there in Montgomery?

A. Yes, sir.

Q. Wanting to know what to do?

A. Yes, sir.

Q. Did you instruct the men of your Local down there to come out?

Mr. Pettus:

We object to that.

A. No, sir.

The Court:

I sustain the objection.

Q. Did you instruct any men that was a member of any Firemen's Organization to decline to work at that time?

A. No, sir.

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial.

Q. In Birmingham or Montgomery?

The Court:

I sustain the objection.

Mr. Simpson:

You can have the witness,

Cross Examination.

By Mr. Pettus:
Q. Mr. Kelly, you did not supply this anonymous caller with five or six men, did you?

A. No, sir, I did not.

Mr. Pettus:
That's all. Thank you.

Mr. Simpson:
Tell Earl Webb to come in.

Mr. Pettus:
You are excused so far as we are concerned.

The Court:
This man may be excused.

(Witness excused.)

Mr. Simpson:
Tell Earl Webb, a colored man, to come in.

EARL WEBB, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Is this Earl Webb?
A. Yes, sir.
Q. You are retired now, aren't you, Earl?

A. Yes, sir.
Q. When did you retire?
A. The 10th day of July, '56.
Q. 10th day of July, this year?
A. Yes, sir.
Q. Where do you live?
A. 1500 South Holt Street, Montgomery.
Q. You are going to have to talk a little louder, Earl.
A. 1500 South Holt Street.
Q. In Montgomery, Alabama?
A. Montgomery, yes, sir.
Q. Before you retired who did you work for?
A. The L&N Railroad.
Q. How long did you work for the L&N?
A. 38 years and some months I think.
Q. Just before you retired what job did you have?
A. Caller and messenger boy, two of them.
Q. Caller, messenger?
A. Yes, sir.
Q. You assisted Mr. Davidson down there, the caller, the man who did the calling, did you?
A. Yes, sir
Q. You know Mr. Davidson?
A. Oh, yes, I know him.
Q. How long did you work there under him?
A. I worked with him I think from about '33.
Q. From 1933 up to the time you retired?
A. Yes, sir.
Q. Do you recall when this strike occurred last October, Earl, here on the L&N System at Birmingham?
A. Yes, sir.
Q. Were you on duty there any that week?
A. Yes, sir, I was on duty.

Q. Do you remember what time the men in Montgomery quit, the work stoppage in Montgomery?

A. No, sir.

Q. Was it Monday, Tuesday, or Sunday, or do you remember what day of the week it was?

A. No, sir, I don't believe I remember the date.

Q. You don't remember the date?

A. No, sir.

Q. Well, do you remember the day of the week?

A. It was on a Tuesday I believe.

Q. You think it was on a Tuesday?

A. Yes, sir.

Q. Were you on duty that Tuesday morning?

A. Yes, sir.

Q. Did you have any duty to deliver any message to anybody that morning?

A. No, sir, I hadn't. I just was fixing to go out to the stock yard.

Q. To the stock yard?

A. Yes, sir.

Q. Did you call anybody to come to work that morning?

A. No, sir, I didn't call anyone.

Q. You didn't call anybody?

A. No, sir.

Q. Were you in the call office when the calling, and so on, stopped there?

A. Yes, sir.

Q. Tell the jury what was done, what happened when that occurred.

A. The time it occurred that morning?

Q. About what time of the mo. ing did it occur?

A. Well, it was around between 7:30 and 8:00 o'clock.

Q. Between 7:30 and 8:00 o'clock?

A. Yes, sir.

Q. Tell the jury, Earl, what happened.

A. I was sitting down at the table on one side and Mr. Davidson on the other side, and this fireman, Dismukes, come in and says "Let's close this joint up."

Q. "Let's close this joint up"?

A. "And get out."

Q. "And get out"?

A. Yes, sir.

Q. What did you do?

A. Nothing.

Q. Did you say anything back to him?

A. No, sir, I didn't open my mouth.

Q. Did Mr. Davidson say anything?

A. Well, he said "Let me get my books and finish calling the crew", and he told him that would be all right, just to get out.

Q. Just to get out?

A. Yes, sir.

Q. All right. What else did he say about his books? What did Mr. Davidson say about it?

A. He just told him just to leave them alone, "I ain't going to bother them."

Q. "Leave your books alone"?

A. Yes, sir.

Q. Did he say anything about what had happened to his books one time before that?

Mr. Pettus:

I object to leading the witness, Your Honor.

A. He said they done away with them.

The Court:
I sustain the objection.

Q. Anyway, he wanted to take his books with him?
A. Yes, sir.
Q. And he said "Just get out now"?
A. Yes, sir.
Q. Did Mr. Davidson go out?
A. Yes, sir, he come out too.
Q. Did you go out?
A. Yes, sir, I went out.
Q. Were you scared?
A. Oh, no, I wasn't scared.

Mr. Pettus:
We object to that—that's all right, we withdraw our objection.

The Court:
I sustain the objection.

Mr. Simpson:
What was that?

A. Sir?
Q. You say you were not scared?
A. I wasn't afraid.
Q. You had about lived up your life, hadn't you?
A. Yes, sir, I was ready to go anyhow.
Q. What?
A. I was about ready to go anyway.

Mr. Simpson:
You can have the witness.

Mr. Pettus:
That's all, Earl. Come down.

Mr. Simpson:
That's all, Earl.
The Court:
He will be excused unless there is objection.

Mr. Pettus:
No objection.

(Witness excused.)

Mr. Simpson:
Tell Mr. Davidson to come in, please.

HUGH C. DAVIDSON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Is this Mr. Hugh C. Davidson?
A. Yes, sir.
Q. Where do you live?
A. In Montgomery.
Q. In Montgomery?
A. 404 South Perry.
Q. What is your business?
A. Chief caller with the L&N.
Q. How long have you been employed by the L&N Railroad?
A. Since 1916.

Q. 1916?
A. Yes, sir.
Q. 40 years?
A. Since 1916.
Q. And do you call train crews there at Montgomery?
A. Yes, sir.
Q. I believe your helper was, up until the time he retired, was Earl Webb, wasn't it?
A. Yes, sir.
Q. Do you belong to a Railroad Union?
A. Yes, sir, I do.
Q. Which one?
A. Brotherhood of Railway Clerks.
Q. The Clerks?
A. Yes, sir.
Q. Were you on duty on Tuesday of this work stoppage or strike last October?
A. Yes, sir.
Q. Did you have any conversation with Mr. Dismukes that morning—I don't mean Mr. Dismukes, we will get to that later. I mean with Mr. Wilder by telephone that morning?
A. Yes, sir.
Q. You did?
A. Yes, sir, we contacted every one in Montgomery and tried to get them to go out.
Q. Yes, sir. Did you talk to Mr. Wilder?
A. Yes, sir.
Q. Did he accept the call?
A. Yes, sir, he accepted the call.
Q. Did he later call you again?
A. Yes, sir, he later called back and laid off.
Q. And laid off?
A. Yes, sir.

Q. Do you know where he was calling from or anything about that?

A. Well, no, sir, I couldn't tell you that. I imagine it was where he stayed, at the rooming place.

Q. All right. Now, after Mr. Wilder had laid off, do you recall whether or not you saw Mr. Dismukes, Mr. Byram, and Mr. Hicks, three firemen from Birmingham?

A. I saw Mr. Dismukes. I don't know about the others. I didn't see them.

Q. You didn't see them?

A. No, sir.

Q. Where did you see Mr. Dismukes?

A. Mr. Dismukes came in the office about 8:30 that morning.

Q. What did he say or do when he cme in?

A. Well, he came in there and told us to "Let's get out and close up this office", which I did.

Q. You got out?

A. Yes, sir.

Q. Did you ask him to let you do anything before you got out?

A. Yes, sir, I asked him to let me finish calling No. 37.

Q. You mean the crew for 37?

A. The crew for 37, yes, sir.

Q. What did he say?

A. He says "Well, how many do you lack?" I told him only two. He says "Well, let's go."

Q. "Let's go"?

A. Yes, sir.

Q. Did you say anything to him about anything else that was there in the office that you wanted to do before you left?

A. Yes, sir.

Q. If so, what?

Mr. Pettus:
We object.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Just tell us your conversation.

A. Well, I started picking up the books, and asked him how about taking the books, that on the other occasion—

Mr. Pettus:
We object to that as a voluntary statement.

Q. Just say what you said.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Go ahead.

The Court:
State what you said.

The Witness:
Sir?

The Court:
Just state what you said and what he said.

A. I asked about taking the books, our record books there, and he told me to leave them there, that they would be all right.
Q. Just leave it there?
A. Yes, sir.
Q. And get out?
A. Yes, sir.
Q. And you got out, did you?
A. Yes, sir.
Q. Were you afraid, scared?

Mr. Pettus:
We object to that.

Q. To work?

The Court:
Overruled.

Mr. Pettus:
Incompetent, irrelevant, and immaterial. We except.

A. Sir.

The Court:
You can answer the question.

A. No, sir, I wasn't afraid, but I didn't like the idea of staying there.
Q. You didn't like the idea of staying there?
A. No, sir.

Q. So you left?
A. Yes, sir.

Mr. Simpson:
All right. You may have the witness.

Cross Examination.

By Mr. Pettus:
Q. Your books were all right when you got back there, weren't they, Mr. Davidson?
A. Yes, sir.

Mr. Pettus:
All right. That's all. Come down.

Mr. Simpson:
That's all.

The Court:
The witness may be excused unless there is objection. You may be excused from further service.

The Witness:
Thank you.

The Court:
Further attendance.

(Witness excused.)

Mr. Simpson:
Call Mr. Pritchett.

J. P. PRITCHETT, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Is this Mr. J. P. Pritchett?

A. Yes, sir.

Q. Where do you live?

A. Montgomery.

Q. Who do you work for?

A. I work for the L&N Railroad.

Q. How long have you worked for the L&N?

A. Since June, 1942.

Q. June, 1942?

A. Yes, sir

Q. In what capacity did you enter the service of the L&N?

A. As a clerk.

Q. What are you now?

A. General Yard Master.

Q. What job do you now hold?

A. I am the General Yardmaster.

Q. You are the General Yardmaster at what place?

A. At Montgomery.

Q. At Montgomery?

A. Yes, sir.

Q. Were you on duty on Tuesday of the work stoppage that happened here last October on the L&N?

A. Yes, sir.

Q. Where is your office with reference to the call office?

A. My office is in the Yard Office. I would say a distance of about a half mile.

Q. Which is closest to town the call office or your office?

A. About the same.

Q. Or the Yard Office?

A. About the same distance. In other words, it is about as far from the caller's office to the Yard Office as it is from the caller's office to the Union Station.

The Court:

Speak up louder so they can hear you and the Court Reporter can get your answers.

The Witness:

Yes, sir.

Q. Did you have anything unusual happen there in your presence, in your office? You are not in the same office with Mr. Davidson?

A. No, sir.

Q. He was in the—what do you call the office he is in?

A. He is in the caller's office, chief caller's office.

Q. Well, I know, but where?

A. At the shop.

Q. At the shop?

A. Yes, sir.

Q. You were in the Yard?

A. Yes, sir.

Q. Now, we have heard evidence about the shop, and what happened at the caller's office. Just tell us if something happened out at the Yard Office that morning, out at your office?

A. Somewhere around 8:30—this was on Tuesday morning?

Q. Yes, sir.

A. Work was going on as normal, and we had three men to enter the Yard Office. And I was at my desk, which is over on one side of the office. And they began to circle around the center of the office, making remarks to the clerks that were on duty in this office, to "Get out", that they was going to close the place down.

Q. To "Get out"?

A. Yes, sir.

Q. Now, do you know who those men were, those three men that were in there circulating around?

A. I knew one of them. He was Mr. Dismukes, a fireman on the South and North Division.

Q. Mr. Dismukes?

A. Yes, sir.

Q. Did you personally know the other two men who were with him?

A. No, sir, I didn't know the other two men that was with him, personally.

Q. Did you see them circulate around in the office there together?

A. The best I recall Mr. Dismukes was the leader and the spokesman for the three. And so far as any remarks made by anybody other than Mr. Dismukes, I didn't hear them.

Q. You did not hear them?

A. No, sir.

Q. All right. Now then, did they, after they had circulated around there, did they stay or leave?

A. They made about three trips around, inside of the Yard Office, and then they left the Yard Office, the main part of the office, and moved over to the

operator's office, which is located in the same building, and then they left the Yard Office.

Q. Then they left the Yard Office?

A. Yes, sir.

Q. All right. Did your men stay at work or did they leave?

A. Well, just as soon as they left—

Q. The men there in your office?

A. Just as soon as the three fellows left, my men in the Yard Office began to gather around my desk, seeking advice as to what to do. They felt it unsafe to stay inside and work.

Mr. Pettus:

We object.

The Court:

I sustain the objection.

Q. Did they say anything about how they felt?

A. Yes, sir, they just said that they were afraid to stay in there and work.

Q. All right. Now then, when they said that to you, what did you all do?

A. Well, I told them—

Q. What did you tell them?

A. I unstructed them to get off the Company property until I could get somebody, some help or police protection or something, and get these men away from the inside, or away from the premises, where there wouldn't be any further disturbance.

Q. All right. Did you see those three men or either one of them talking to anybody else around there?

A. No, sir, I do not remember, I didn't see them have any personal, any conversation with them, other than I just heard the remarks made which were made in a loud tone of voice.

Q. "Let's get out of the office"?

A. Yes, sir.

Q. When they left that office, did you see where they went?

A. Yes, sir.

Q. Tell us about that.

A. When we started to leave, or started to leave the Yard Office, I noticed that they had one of my switch engines stopped with a cut of cars, and he was in the process of switching a cut of cars at the south end of what we call the North Yard.

Q. Yes, sir.

A. And they had this switching crew stopped.

Mr. Pettus:

We object to that as a conclusion.

The Court:

I didn't get his answer to that.

Q. Go ahead and tell what you saw.

The Court:

I exclude that.

Q. Go ahead and tell what you saw up there.

A. All right.

Q. Was the switch engine moving or standing when you saw it?

A. He was standing still.

Q. Was one of these men there present, there where the switch engine was?

A. Yes, sir.

Q. Had the switch engine been moving?

A. The switch engine had been moving. He was in the process of switching up a train.

Q. All right, making up a train?

A. Yes, sir.

Q. Was one of these men near that switch engine?

A. Yes, sir.

Q. Where was he?

A. He was located just about even with the switch engine.

Q. Just about even with the switch engine?

A. Yes, sir.

Q. How far was that from where you were?

A. I would estimate it, the amount of feet, I would say about 300,—300 yards.

Q. About 300 yards?

A. Yes, sir.

Q. Up north of you in the yard?

A. Yes, sir, north, in the yard.

Q. You, of course, could not hear the conversation?

A. No, sir.

Q. What did your crew do, on that switch engine?

A. They done as the clerks in the Yard Office. They, or the foreman of the crew contacted me as I was going across the tracks. In other words, he just walked on down and met me and asked me for advice, what to do. He said they didn't feel like it was safe, and wanted to know what to do with the cut of cars that he had hold of, leave it where it was or put it in the clear. And we had them to put the cut

of cars in the clear and get off the Company property as we had instructed the rest.

Q. Did they then leave the Company property?

A. Yes, sir.

Q. That crew?

A. Yes, sir.

Q. Did you see either of these three men anywhere else on the property that morning?

A. Yes, sir, as they left, after they left the switch engine, they come down by what we call the South and North Caboose Track. There were several South and North cabooses on this track and they walked down by this caboose track.

Q. Did they stop or engage anybody in conversation there?

A. Yes, sir, I would say—I couldn't say for sure now that they—

Mr. Pettus:

Q. What did you see them do, what did they do?

A. We just saw them walk along the side of these cabooses and turn back, turn their heads back and forth towards the direction of the men standing on the platform of the cabooses.

Q. Could you tell which one of the three, or were they altogether, that were doing that job?

A. All three were together, but Mr. Dismukes seemed to be turning his head.

Q. He was the one that was apparently talking?

A. Yes, sir.

Q. All right. How long was it before Montgomery got back to work?

A. We went back to work about 9:00 o'clock on Wednesday night, October 25.

Q. This happened on Tuesday, the 25th?
A. Right.
Q. You were down from the time this happened on the morning of the 25th until Wednesday night?
A. Yes, sir.
Q. The next night about 9:00 o'clock?
A. Yes, sir.

Mr. Simpson:
You can have the witness.

Cross Examination.

By Mr. Pettus:
Q. What is your title?
A. General Yardmaster.
Q. How long have you been at Montgomery?
A. You mean in the L&N employment?
Q. In the employment, yes.
A. Since June 2, 1942.
Q. You have been there the whole time, have you?
A. Yes, sir.
Q. This switch engine that you mentioned, when you first noticed that, and these men that you say were there with it, that was about 300 yards away?
A. Yes, sir.
Q. From where you were standing?
A. Yes, sir.
Q. You didn't hear any of the conversation that went on between them there, did you?
A. No, sir.
Q. If any went on?
A. No, sir.

Q. After you first saw the engine there and saw the men up there, was there any movement of the engine after that?

A. No, sir.

Q. No movement?

A. No, sir.

Q. It just stopped right there, did it?

A. Yes, sir.

Q. Everybody just walked out peaceably there, didn't they?

A. Yes, sir.

Mr. Pettus:
That's all.

Mr. Simpson:
That's all, Mr. Pritchett.

The Court:
Is there any further use for this witness?

Mr. Simpson:
No, sir. We would like for him to be excused.

Mr. Pettus:
He is excused.

The Court:
You are excused, Mr. Pritchett.

(Witness excused.)

Mr. Simpson:
May it please the Court, we expected a little more cross examination of these witnesses than these

gentlemen have seen fit to give them, and consequently I am going to now offer some parts of these depositions, if I may.

The Court:
All right.

Mr. Simpson:
And read them.

Mr. Pettus:
Will you tell me which ones you are looking at?

Mr. Simpson:
Give me Mr. Letchman. Will you turn to Mr. Letchman at page 10, Mr. Pettus, Mr. Letchman?

Mr. Pettus:
Yes.

Mr. Simpson:
Beginning on page 10 of his deposition with the question "All you knew when you went over there", and ending the third line from the bottom with the answer "Yes, sir, anything within reason."
I would like to read that part of that deposition, Your Honor.

The Court:
All right, proceed.

Mr. Simpson:
Will the Court instruct the jury as to what this is?

The Court:
All right, proceed.

The Court:
Gentlemen, these are pretrial depositions taken of the Defendants in this case.

Mr. Taylor:
Where did that question end?

Mr. Simpson:
As soon as the Court has finished.

Mr. Taylor:
Oh, excuse me.

The Court:
These are what is known as pretrial depositions taken by the Plaintiff, taken before the trial of this case, of course, of the Defendant. And he is going to read parts of these depositions.

Of course, the other side can read other parts of the depositions if they wish to.

Mr. Pettus:
If the Court please, give us an opportunity to see if we have any objections there. I don't know that we will but I would like to just see what he is going to read.

Mr. Taylor:
What is the starting point and ending point?

Mr. Simpson:
"Yes, sir, anything within reason" on that same page.

The Court:
Go ahead.

Mr. Simpson:
Shall I go ahead?

The Court:
Yes.

Mr. Simpson:
Mr. Letchman.

Mr. Pettus:
We would like to object to this mental operation here on the last of the question that he has got, about what was in the man's mind.

The Court:
I don't have the deposition before me, and I can't see what you are talking about.

Mr. Simpson:
We will give the Court the official deposition and I will use my copy.

Mr. Taylor:
Go ahead, and I will state the objection when we get to it.

The Court:
All right.

Mr. Simpson:

Beginning with the words "All you knew", Mr. Letchman was asked this question:

"Q. All you knew when you went over there, you were going to figure out a way to put these people back on the job?

"A. Yes, sir, or try to.

"Q. You were in agreement on that?

"A. Yes, sir.

"Q. You planned to do what you could to help them?

"A. Of course, I had nothing to do with the main line. My seniority is not over there.

"Q. When you went over there you went over there with the idea of doing anything you could do to put them back?"

Mr. Taylor:

If Your Honor please, we object to that question. It calls for a mental operation and conclusion of the witness.

The Court:

I sustain the objection as to that.

Mr. Simpson:

As to which, Your Honor?

The Court:

As to that question.

Mr. Taylor:

The last one you read, Mr. Simpson.

Mr. Simpson:
"When you went over there you went over there with the idea of doing anything you could to put them back to work?"

The Court:
"With the idea", it calls for a plan and so on.

Mr. Taylor:
Did you read the answer to the jury before the Judge sustained the objection?

Mr. Simpson:
I don't know whether I have read that at all or not. I understand the Court is sustaining the objection to that question.

The Court:
Yes.

Mr. Simpson:
We except. We offer to read the answer which the Witness Letchman made at that time.

The Court:
That is on page 10?

Mr. Simpson:
Yes, sir. Now then, on page 13 is a little part there that I also want to read, beginning at the second question from the top. "Now when you went in there", down through the answer "I didn't hear any objection to it."

The Court:
All right.

Mr. Simpson:
Shall I proceed?

The Court:
You may proceed.

Mr. Simpson:
This is still Mr. Letchman.

"Q. Now, when you went in there, who is the first person who had anything to say about what the meeting was about?

"A. Well, after about five or ten minutes, or about ten minutes I'll say, I believe Mr. Reese Thomas got up, and as well as I remember made the statement to the effect that 'We are here to discuss ways and means'—he first told about these hostler helpers jobs was going to be abolished—'And we are here to discuss ways and means of trying to get the men back'.

"Q. Was everybody in agreement with that idea?

"A. Yes, sir, I guess they were. So far as I know they were.

"Q. You didn't hear anybody say anything about being opposed to it?

"A. No, sir, I didn't hear any objection to it."

Now then, beginning on page 32 I want to read what Mr. Letchman said about the occasion when Mr. Mitchell and Mr. Woelde went out to the Yards to see if there was any livestock or perishable cars on the waybills out there on Monday morning about 10:00 or 11:00 o'clock, 10:00 or 12:00—11:00 or 12:00 o'clock,

and beginning on the fourth line from the top of page 32.

"Q. How mmuch time during the three day work stoppage did you spend around the Master Mechanic's gate?

"A. Oh, I guess when I saw him over there, something like 30 minutes.

"Q. Who was with him at the time?

"A. I don't know. He was sitting in his car off to the side, and I saw two or three other men. There wasn't anyone with him.

"Q. Were there any other automobiles?

"A. I believe there were two other fellows, and they were in an automobile.

"Q. Were they firemen?

"A. I don't know. I don't think they were.

"Q. To your recollection, Mr. Letchman, I will ask you if you didn't see Reese Thomas, Jody Johnson, C. S. Hawkins and Bruce Bennett there at the time about the Master Mechanic's gate in the early afternoon of Monday, October 24?

"A. Now, I don't remember whether it was October 24. I saw Reese Thomas up there one day. It might have been Monday or Tuesday. I don't remember.

"Q. Were people with him?

"A. Some."

The Court:

"Were there some people with him"? That was incorrectly read.

Mr. Simpson:

"Were there some people with him", thank you, sir.

"A. Somebody was in the car with him.

"Q. Did you recognize any of them?

"A. No, sir, I never noticed who it was.

"Q. Who else did you see around the Master Mechanic's gate on that occasion?

"A. That's all I remember besides two or three other fellows over there in the car, but I don't know who they were.

"Q. Did you see anybody out standing on the ground?

"A. No, I didn't see anybody out standing on the ground.

"Q. How much time did you spend around the Master Mechanic's gate?

"A. About 30 minutes.

"Q. Was that the only occasion you were there during the work stoppage?

"A. Yes, sir.

"Q. And you say that was in the early afternoon of whatever day it was?

"A. It seems to me like it was around 11:00 o'clock in the morning, somewhere along 11:00 or 12:00, I don't remember now.

"Q. Was the gate open or closed when you arrived?

"A. I don't remember but I believe it was open. I won't be positive, but I believe it was.

"Q. Was it open or closed when you left there?

"A. I don't remember that.

"Q. Did anyone open it or close it while you were there?

"A. I don't remember that. I don't remember if they did or not. If they did, I didn't see them.

"Q. Did you know Mr. C. E. Woelde?

"A. The name sounds familiar, but I am not acquainted with him.

"Q. Do you know what if any position he held with the Railroad Company at that time?

"A. It seems to me like it was Yardmaster or Trainmaster, I don't remember.

"Q. Do you know a big fellow named Ben Mitchell?

"A. Yes, sir.

"Q. Did you know him then?

"A. Yes, sir.

"Q. How long had you known him?

"A. I don't know him too well, I just never had too much dealings with him. He works on the main line, and I have never had any, many straight out dealings with him, but I had been knowing him off and on since I have been with the L&N Railroad when I saw him.

"Q. You were reasonably friendly with him?

"A. I was for a while, but I'm not now.

"Q. Well, you were reasonably friendly with him during this work stoppage?

"A. No, sir.

"Q. Did you have any personal difficulty with him?

"A. No. He and I didn't—but I'm just not friendly with him any more, and I wasn't before this work stoppage either.

"Q. He did something to you?"

Mr. Taylor:

We object to the next answer as being incompetent, irrelevant, and immaterial.

The Court:
I sustain the objection to that.

Mr. Simpson:
I think it is competent, Your Honor, to show interest of this Defendant.

Mr. Taylor:
You have already shown that.

Mr. Simpson:
It shows what the situation was there at the time.

The Court:
I sustain the objection to it.

Mr. Simpson:
Down to where, Your Honor.

The Court:
Except th answer "No, sir." Of course, "Did he do something to you", the statement from there on except th answer "No, sir."

Mr. Simpson:
To that question?

The Court:
Yes.

Mr. Simpson:
All right. We except.

"Q. And you were unfriendly to him after that?

"A. I never said anything to him or had any words, and he didn't say anything to me. But I just went my way and he went his.

"Q. You and he, however, never had any personal difficulty or trouble?

"A. No, sir.

"Q. Now, did you see Ben Mitchell at any time during the three day work stoppage?

"A. Yes, sir.

"Q. Where was that?

"A. Well, I was sitting up there with this fellow Hawkins that you asked me about, and he came up in a car, he and some man, I think it was Mr. Woelde.

"Q. Sir?

"A. He came up in a car and I believe there was some man with him, and I think it was Mr. Woelde.

"Q. What, if anything, did he say to you, or Mr. Woelde say to you at that time?

"A. He didn't say anything to me.

"Q. What, if anything, did he say to Mr. Hawkins, to C. S. Hawkins?

"A. He didn't say anything to him that I remember.

"Q. What did you say to either one of them, those two men, Woelde or the other one?

"A. I didn't say anything. But he went in the place, and he asked him Mr. Mitchell, 'Did you find that car' and he said 'Yes', and went on.

"Q. Now, what did you hear Reese Thomas say to him at that time?

"A. Nothing to amount to anything. I heard them talking over there where the car was, and he said something about finding a car of perishables or something, and I understood Reese to say 'You want me

to go help you find it?', or something to that effect, or 'I'll help you find it if you want me to.'

"Q. Did you see Reese Thomas' automobile out there then?

"A. I saw the car he came up in. I don't know whether it was his car or not, I judge it was. He was driving it I think.

"Q. He was driving it?

"A. I believe he was. I won't be positive.

"Q. It was a blue Dodge convertible?

"A. I don't know what kind it was, I never noticed.

"Q. Did you hear Bennett say anything to either Mr. Woelde or Mr. Mitchell?

"A. No, sir, I don't remember whether Bennett was there.

"Q. Sir?

"A. I don't remember if Bennett was there.

"Q. Do you know Bennett?

"A. Yes, sir, but I don't remember seeing him if he was there.

"Q. Did you see him at any time during the three day work stoppage?

"A. Yes, sir, I think I saw him around the grill or some place out there, I believe I did, but I don't remember now. I saw so many of them, I don't remember.

"Q. You told us you heard Mr. Mitchell say something to Mr. Thomas, or Mr. Thomas say something to Mr. Mitchell about a car of perishables.

"A. Perishables or fruit or something.

"Q. Did you understand that to be a railroad car?

"A. Yes, sir, that's what I understood it to be. He said 'A car', and I figured it couldn't be anything but that.

"Q. Inside of the Yard?

"A. Yes, sir.

"Q. You knew what they were referring to?

"A. Yes, sir.

"Q. Did you see the Thomas car move away from in front of the gate at that time?

"A. I think it finally left there, but I don't remember when. I don't think it left right then. I think it left after a little while.

"Q. You were in a different automobile, weren't you?

"A. Yes, sir.

"Q. Did you stay in it all the time?

"A. You mean stay in the car?

"Q. Yes, sir, you just said you were in a different automobile from the Thomas automobile.

"A. Yes, sir. I stayed in it with this fellow Hawkins about 30 minutes.

"Q. His car or your car?

"A. His car.

"Q. Did either one of you leave the car at any time during that 30 minutes?

"A. No, sir.

"Q. How far was that car sitting from the Master Mechanic's gate?

"A. I guess about 40 or maybe 60 feet, something like that.

"Q. And how far was the Thomas car, or the car Thomas was driving?

"A. I don't know, I think he pulled to the gate and on up there a piece. I believe he did, as well as I remember.

"Q. How far in your judgment were you from Thomas and Mitchell at the time they had this conversation?

"A. I guess 40 to 60 feet, something like that, maybe a little more.

"Q. Were you out on the ground?

"A. Yes, sir."

Mr. Taylor:

"Were they out on the ground?"

Mr. Simpson:

"Were they out on the ground?" Thank you.

"Q. Were they out on the ground?

"A. Yes, sir, I think they were talking, standing up out of the car.

"Q. Right in front of the gate?

"A. Not right directly in front of it, but right there close to it, back there a little west of it.

"Q. All you heard on that occasion was something said about perishables?

"A. Yes, sir, yes, something said about going in and getting a car of perishables, or doing something to it.

"Q. Well, did they talk a good little while or just exchange that remark and separate?

"A. Just a minute or a minute and a half, something like that.

"Q. Each one of them talked during that period?

"A. Yes, sir, I think they were.

"Q. Were two of them alone or were there others there close to them?

"A. I don't remember those other fellows around there. I think they were standing there talking to them.

"Q. Mitchell and Thomas?

"A. Yes, sir.

"Q. Where was Mr. Woelde during that time?

"A. If that was Mr. Woelde I think he was in the car.

"Q. How far from the place where Thomas and Mitchell were talking?

"A. I think they pulled up there and they were just on the other side, in a car, a little piece.

"Q. Just standing on the outside of the car Woelde was in?

"A. Yes, sir, maybe 15 or 20 feet, something like that.

"Q. You were 40 or 50 feet away?

"A. Yes, sir, east of it.

"Q. You and Hawkins?

"A. Yes, sir.

"Q. Where was Jody Johnson?

"A. I didn't see Jody Johnson down there.

"Q. You didn't see him?

"A. No, sir.

"Q. Are you telling us he was not there?

"A. I couldn't absolutely swear it, but I don't believe he was there. If he was, I didn't see him, if he was there, I didn't see him.

"Q. That is your recollection?

"A. He was not, that's the best of my recollection.

"Q. And your recollection is also Bruce Bennett was not there?

"A. I don't know whether he was or not. I didn't see him there, if he was there.

"Q. There wouldn't have been anything there at that time to keep you from seeing him if he had been there?

"A. I never noticed. He came down there, and I never noticed who it was."

The Court:

"A car."

Mr. Simpson:

"A car came down there, and I never noticed who it was." Thank you, Judge.

"Q. Where did you—what did you and Mr. Hawkins do while you were sitting there?

"A. Just shot the bull in general; talked about this thing, wishing they could get it straight. We wanted to go back to work, and first one thing and then another.

"Q. Where was it you first got in touch with Mr. Hawkins that day?

"A. I drove around and saw some people down there, and he was sitting down there, and I drove over and met him.

"Q. You got in his car?

"A. Yes, sir.

"Q. Did you leave before Hawkins, or Hawkins before you?

"A. I believe I left before him. I just finally left.

"Q. Was that before or after Ben Mitchell and Woelde got out of the Yard?

"A. You mean when I left?

"Q. Yes, sir.

"A. After they came out and left.

"Q. You stayed there all the time they were in there?

"A. Yes, sir."

Mr. Simpson:

It is "say", but the sense makes it "stay."

"A. Yes, sir.

"Q. What was said between you and Reese Thomas while these two men were inside?

"A. I hollered over there and I said 'What did Mitchell allow', and he said he was going to check a car. I said 'What did you tell him', and he said 'I just told him I would go in there and help him find the car', and that's all.

"Q. That's all you said?

"A. Yes, sir.

"Q. And you don't remember that anyone was there but Reese Thomas?

"A. There was somebody sitting in the car with Reese Thomas but I never noticed who it was.

"Q. Did they stay there all the time Mitchell and Woelde were inside of the Yard?

"A. Yes, sir, I think they did.

"Q. And they were there when you left, weren't they?

"A. No, I believe after Ben Mitchell left, they left, I believe.

"Q. As soon as Woelde and Mitchell came out?

"A. It might have been five or ten minutes after. I don't remember now.

"Q. They left?

"A. I believe they did.

"Q. When you and Hawkins left?

'A. I didn't know when Hawkins left. I went and got my car and went back up the road.

"Q. None of you left until Mitchell and Woelde came out of the Yard?

"A. I didn't.

"Q. So far as you know, nobody left?

"A. That's right.

"Q. None of the three men you remember left?

"A. No, sir.

"Q. They were there all the time they were in there?

"A. Yes, sir.

"Q. Where did you go after you left that place?

"A. I don't remember, but I think I went on down to the Rex Grill.

"Q. Were you and Hawkins sitting out there at the Master Mechanic's gate when Woelde and Mitchell drove up?

"A. Yes, sir.

"Q. How far ahead of Mitchell and Woelde was Reese Thomas' car as they came in there?

"A. I reckon about 8 or 10 minutes, something like that.

"Q. They had been waiting there all that time?

"A. Well, they were there, and they came there about 8 or 10 minutes, something like that, I didn't know.

"Q. They didn't drive in behind or in front of the car that Mitchell and Woelde came in?

"A. They were down there before they ever got there I believe.

"Q. You don't remember now whether that was Monday or Tuesday?

"A. To the best of my memory that was Tuesday. I won't be positive, but I don't remember."

Mr. Simpson:

On page 50 is a short extract, 50 and 51, Your Honor, beginning with the next to the last question on page 50:

"Q. How many men were still in the Parker garage when you left?"

Mr. Simpson:

This has reference to the meeting at Mr. Parker's house on Sunday afternoon.

"A. I don't remember. There was a pretty good crowd in there. I may not have been the first one to leave, I don't remember.

"Q. What is your judgment about the total number of men that were there when you went there?

"A. When I first went in?

"Q. When the meeting started.

"A. I would say 20 men or something like that.

"Q. Give us your best judgment about the number that was still there when you left.

"A. I think the biggest part of them were there.

"Q. Practically all of them, weren't there?

"A. Yes, sir.

"Q. Were they in general agreement or were they in disagreement."

Mr. Taylor:

We object to that, it calls for a mental operation and conclusion, as to whether a group of people were in general agreement.

Mr. Simpson:

May it please the Court, agreements are facts, just the same as any other fact.

The Court:

I think if it was expressed by language he could testify to it. I don't know what he is referring to. Of course, he couldn't read anybody's mind. I overrule the objection.

Mr. Simpson:

All right.

"Q. Were they in general agreement or were they in disagreement?

"A. As far as I saw they were in agreement, or as far as I could detect they were all in agreement.

"Q. You didn't hear any disagreement by anybody?

"A. No, sir.

"Q. While you were there at any time?

"A. No, sir.

"Q. They were in agreement about what was to be done to get the hostler helpers jobs restored, weren't they?

"A. Yes, sir."

Mr. Simpson:

I would like to read briefly from the J. M. Weldon deposition.

The Court:

We are going to take a recess at this time. 20 minutes, gentlemen.

(A short recess was had.)

The Court:

All right, Mr. Simpson, whose deposition are you reading? Mr. Gibson asked to be excused just a minute, but go ahead.

Mr. Simpson:

I see. I didn't know that, Your Honor. Let's read the deposition next of Mr. Baum on page 57, Your Honor.

The Court:
All right.

Mr. Simpson:
At the bottom of that page, the last question and the answer. This gentleman is the deposition of Mr. H. M. Baum, one of the Defendants:
"Q. Well, when you used the word there is a right way and a wrong way to handle those things, tell us what you were talking about when you referred to the wrong way?"

Mr. Taylor:
We object to that. It calls for a mental operation and conclusion of the witness.

The Court:
You will have to read back to get the connection. It may be, it would be admissible if connected up back there.

Mr. Simpson:
All right, sir. Let's go back up then to the second question above that. I am not sure that this is relevant.

"Q. A while ago when I was asking you about the meeting at Parker's house, you commented that there was a right way and a wrong way to handle a labor matter, and you stated I think you advocated handling the matter with the local officials, and then with Louisville if necessary. Did you consider that the right way to handle the grievance?
"A. The way I stated there, yes.

"Q. All right, sir, and what do you consider the wrong way?"

Mr. Taylor:

If Your Honor please, we object to the consideration of the wrong way. He stated in answer to the other question what he had stated previously. He is not giving an opinion, he was giving a statement that was made.

The Court:

Overruled.

Mr. Simpson:

(Reading.)

"A. Well, I don't know, because so far as I can see there was no one individual, whether switchman, trainman, conductors and engineers were all outside of that gate. There was no one individual responsible for nothing.

"Q. Well, when you used the word there is a right way and a wrong way to handle those things, tell us what you were talking about when you referred to the wrong way?"

Mr. Taylor:

I renew my objection.

The Court:

Overruled.

Mr. Simpson (Reading):

"A. I believe the Birmingham News stated that, they said that the strike was illegal. That was wrong,

that was the wrong way if such a thing had happened. They said it was an illegal strike and a wildcat, something like that. Now, they said that, the Birmingham News said that. Now, if that was the steps that were taken I would say it was wrong, but I can't vouch that those steps were taken, I don't know."

Mr. Taylor:
Just a minute, Mr. Simpson. I object and move the answer be excluded, Your Honor, because it is incompetent, irrelevant, and immaterial.

Mr. Simpson:
It shows his mental attitude.

Mr. Taylor:
The statement was volunteered and not in response to the question that was asked.

Mr. Simpson:
This is a Defendant.

The Court:
This is an adverse party, a Defendant in the case.

Mr. Simpson:
A Defendant. It shows his mental attitude, and what he knew.

The Court:
I overrule the objection and overrule your motion.

Mr. Simpson:
That is the only thing on Mr. Baum.
Now next is Mr. Otts.

Mr. Pettus:
Let me find that before you proceed.

Mr. Simpson:
If you will, turn to page 20, Erle, beginning with the second question. It is the second question on page 20, Your Honor.

The Court:
J. B. Otts' deposition?

Mr. Simpson:
Yes, sir.

The Court:
All right.

Mr. Simpson:
J. B. Otts, one of the Defendants:

"Q. When you were standing down beside the Masonic Hall in Inglenook on Friday night before the strike, discussing with Mr. Grissom the question of calling this information meeting, who else was in the group there, talking there?

"A. I believe Mr. McCutcheon was there and maybe Mr. Fleming, I don't recall. There were only three or four there.

"Q. All right, tell us what was said about getting the information meeting together.

"A. Well, the subject was brought up that we hold the meeting, and then came the problem of the place to meet, and I believe that we decided to meet at Mr. Parker's house.

"Q. Who suggested Parker's house?
"A. I believe he did.
"Q. So Mr. Parker was present also?
"A. He must have been."

Mr. Simpson:

Next is on page 41, beginning with the next to the last question on page 41, Your Honor. This is still the deposition of Mr. J. B. Otts:

"Q. Did anybody ask you what Mr. Paschal said or had done about it?
"A. I don't recall.
"Q. You just told them you had taken it up with them, but didn't tell them how far you got.
"A. When I take something up with the General Chairman that's the extent of it.
"Q. Well, is that secret, when you take up anything with the General Chairman?
"A. No, sir.
"Q. Did you tell them what the General Chairman said?
"A. I don't recall whether I did.
"Q. What had the General Chairman said?
"A. He had said the men involved, that is the outside hostler helpers, should make claim for the time that the abolition was in effect, and to protest it to the Company.
"Q. Did you tell the people that?
"A. I don't recall whether I did or not."

Mr. Simpson:

Now, beginning on page 198 of that deposition of Mr. Otts.

The Court:
This is another part of it I believe, isn't it?

Mr. Simpson:
Yes, sir.

The Court:
Is that the same witness?

Mr. Simpson:
Yes, sir, the same book, page 98. I said "198."

The Court:
Oh, you mean 98?

Mr. Simpson:
I beg your pardon. I said 198. It extends to 103. Beginning just below the middle of the page with this question:

"Q. Do you know anybody named Bryam?"
Mr. Simpson:
Has the Court found that?

The Court:
Yes.

Mr. Simpson:
All right.

"Q. Do you know anybody named Bryam?
"A. Yes, sir.
"Q. What is his initials?
"A. J. B.
"Q. Did you talk to Mr. J. B. Bryam?

"A. Yes, sir, I believe I did.
"Q. What is he?
"A. A fireman.
"Q. Where was he when you talked to him?
"A. He called from Montgomery.
"Q. What day did he call from Montgomery?
"A. I couldn't say.
"Q. During the strike period?
"A. During the walkout if that is what you have reference to.
"Q. You know what I mean, the cessation of work between Sunday and Wednesday, from October 23 to October 26?
"A. That is what the newspapers call it.
"Q. What did you call it?
"A. A walkout.
"Q. Was that during the walkout period?
"A. Yes, sir.
"Q. What did you and Mr. Bryam discuss?
"A. He asked me if I could give him any advice.
"Q. Well, what did you—well, did you give him any advice?
"A. No, sir.
"Q. What did you say to him?
"A. I told him this place was closed up so far as I knew, that's all I could tell him.
"Q. What sort of advice did he want?
"A. He just asked for advice.
"Q. You didn't know whether he wanted advice about finances or what?
"A. He just asked for advice.
"Q. He called up and stated 'I want advice'?
"A. Yes, sir.
"Q. And he didn't specify advice about what?
"A. I don't recall he did.

"Q. Your best recollection is he said 'I want advice' and dropped it?

"A. Yes, sir.

"Q. What did you tell him?

"A. Like I told you before.

"Q. What did you tell him in response to his request for advice?

"A. What did I tell you a moment ago?

"Q. Do you remember what you told us?

"A. Yes, but evidently you can't remember it.

"Q. What did you tell us?

"A. I told him the only thing I could tell him was that everybody had walked out and the place was shut down.

"Q. Did you tell him anything about what they ought to do in Montgomery?

"A. No, sir.

"Q. Did you ask him anything about what they were doing or had done in Montgomery?

"A. No, sir, I don't recall.

"Q. Did he tell you who was in Montgomery with him?

"A. No, sir, I don't think he did.

"Q. Did you happen to know who was down there with him?

"A. No, sir.

"Q. Did you know that they were, what they were doing in Montgomery at that time?

"A. I had seen him leave that morning on the local.

"Q. What morning?

"A. On Sunday morning. I don't know when he left there.

"Q. Left where?

"A. Montgomery.

"Q. Did you have a conversation with him before he left on the Sunday morning?

"A. I don't recall having any conversation with him.

"Q. Who was his engineer?

"A. I believe it was J. R. Frazier.

"Q. Do you know how he got to Montgomery?

"A. No, sir.

"Q Do you know how Dismukes got down there?

"A. No, sir.

"Q. Now, when Bryam called you, you don't recall whether it was day or night?

"A. It was nighttime.

"Q. Where did he catch you?

"A. He called and I was not at home and he left the operator's number for me to call.

"Q. And when you got home you accepted his call?

"A. Yes, sir.

"Q. Did he tell you where he was in Montgomery?

"A. I believe he said he was at the Gary Hotel.

"Q. Did he tell you what he was doing in Montgomery at that time?

"A. I don't know that he did.

"Q. He went down on the local that Sunday. What was he due to come back on?

"A. He was due back on the local Monday.

"Q. Did this call come after he was due to be back in Birmingham?

"A. Yes, it must have.

"Q. Well, did you ask him why he was still in Montgomery, why he wasn't back in Birmingham?

"A. I don't recall having asked him that.

"Q. Did he tell you?

"A. I don't recall.

"Q. Did you mention whether the L&N was operating in Montgomery?

"A. I don't recall that.

"Q. Did you ask him about the situation so far as the work stoppage in Montgomery was concerned?

"A. I don't recall that.

"Q. Did he tell you anything without you asking him?

"A. Not to my knowledge.

"Q. Did you give him any advice with respect to what he should do with respect to his staying down in Montgomery?

"A. No, sir.

"Q. Did you send any message to Mr. Bryam or to Mr. Dismukes?

"A. No, sir."

Mr. Pettus:

"Did you send any message by Mr. Byram to Mr. Dismukes?"

Mr. Simpson:

That's right, "Did you send any message by Mr. Byram to Mr. Dismukes?"

"A. No, sir.

"Q. Do you know of your own knowledge what Mr. Byram and Mr. Dismukes did in Montgomery?

"A. No, sir.

"Q. That is on Monday or Tuesday?

"A. No, sir.

"Q. Have they told you what they did down there?

"A. No, sir.

"Q. Have you heard what they did?

"A. No, sir.

"Q. Now then, when Mr. Barker called you from Decatur you told us he was a fireman in Decatur?
"A. Yes, sir."

Mr. Simpson:
And I want to skip then to page 105, about this call from Mr. Scoggins at Decatur.
"Q. Did he call you before or after Barker?"

Mr. Simpson:
That is just above the middle of the page, Your Honor.

"Q. Did he call you before or after Barker?
"A. I couldn't say.
"Q. What time did Mr. Scoggins call you, at what time? What did Mr. Scoggins call you about? Did he pay for his call?
"A. Yes, sir.
"Q. He invested a dollar or so in his call, and what did he say to you?
"A. He asked me practically the same thing Barker did.
"Q. What did Mr. Scoggins say, his words, the best you recall?
"A. Well about the same thing Barker said."

Mr. Simpson:
Now, that's all from Mr. Otts' deposition.
Now, Mr. Reese Thomas, A. R. Thomas' deposition, page 2. Mr. Thomas is one of the Defendants, "When is the first time you heard there was going to be such a meeting?" I guess I had better read back a little further to get the connection, up there, the question which says "Were you one of those who attended

the meeting in Mr. Parker's house on Sunday afternoon?" Do you find that place?

Mr. Taylor:
Yes.

Mr. Simpson:
All right.

"A. Yes, sir.
"Q. October 23?
"A. That's right.
"Q. When was the first time you heard there was going to be such a meeting?
"A. Friday night, when I talked with McCutcheon, he told me they had agreed on meeting at Shorty Parker's house at a Union meeting earlier in the night. I don't recall whether it was in the meeting or outside of the meeting."

Mr. Simpson:
Now, page 13 of the same deposition, beginning with the question:

"Q. How did you plan to be of assistance in getting the hostler helpers jobs restored?
"A. By my moral support, is all the support I had.
"Q. You were ready to do whatever you could, of course?
"A. That's right."

Mr. Simpson.
Now, on page 28, beginning with the last question on that page. This is still the deposition of Mr. Reese Thomas.

"Q. Give me the name, if you will, of every person that you saw Sunday night in the vicinity of Rex's Barbecue, and in the vicinity of the roundhouse gate.

"Mr. Taylor:
You are asking in addition to the ones he gave you Mr. Gibson?

"Mr. Gibson:
Yes, sir.

"A. I saw everybody named in this suit at one time or another, as well as approximately five hundred or a thousand men that was not named in it.
"Q. How long did you stay in the vicinity or in the neighborhood on Sunday night?
"A. I stayed there all night.
"Q. What time did you leave Monday morning?
"A. Around 9:00 o'clock or 10:00 o'clock.
"Q. Where did you go from there?
"A. I went to town.
"Q. Is that the visit you made to the main office on Morris Avenue?
"A. That's right."

Mr. Simpson:
That's all from Mr. Thomas' deposition.

Next is Mr. J. M. Weldon, on page 14, down about two-thirds of the way down the page is a question.

"Q. Do you know a fireman named Lee Thomas, colored?"

Mr. Simpson:

This is the deposition of Mr. J. M. Weldon, one of the defendants.

"Q. Do you know a fireman named Lee Thomas, colored?

"A. I may know him, but I wouldn't—there is a gang of those Negroes out there.

"Q. Did you see Lee Thomas down at the L&N Passenger Station Sunday night, October 23?

"A. Yes, I think I did.

"Q. You know you did, don't you?

"A. I am reasonably sure I did."

Mr. Simpson:

Now, on page 16, beginning just below the middle of the page with the question:

"Q. I will ask you did you at any time that night expose that knife with the blade open to that fireman?

"A. No, sir. I might have casually had my knife out picking my fingernails, and he may have seen it, I don't know. I got the habit of, if I find dirt under my nails, I will pick it out. But as far as pulling the knife out and scaring Lee Thomas, I didn't do it.

"Q. You don't think you were picking your fingernails on Sunday night out there with the walkout going on, do you?

"A. There is a possibility. I hadn't walked out.

"Q. Some had?

"A. So far as I was concerned, I was on the off board.

"Q. What time was it down there that you saw Lee Thomas?

"A. I don't know that.

"Q. What is your best recollection about the time?

"A. About 10:00 o'clock."

Mr. Simpson:

Now, call Mr. Hobson, please.

Mr. Pettus:

This man has been sitting in the Courtroom back here a couple of days, Your Honor. We object to using him.

Mr. Gibson:

The witness was not under subpoena.

The Court:

How is that?

Mr. Gibson:

Until an occurrence in the trial yesterday, we didn't have him subpoenaed. We didn't know we would use him as a witness.

The Court:

All right, that will go to his credibility rather than admissibility of his testimony.

C. L. HOBSON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:

Q. Is this Mr. C. S. Hobson?

A. C. L Hobson

Q Do you live in Birmingham, Mr. Hobson?
A I live in Center Point.
Q. For whom do you work?
A. L&N Railroad Company.
Q. Did you work for the L&N in October, of 1955?
A. Yes, sir.
Q. In what capacity, please, sir?
A. Locomotive engineer.
Q. Do you recall the time in October, of last year, Mr. Hobson, when there was a strike or walkout at the Boyles Yard?
A. Yes, sir.
Q. Were you on duty that night?
A. Yes, sir.
Q. What is the first thing that you noticed on that night out in the Yard that was unusual or out of the ordinary?
A. Well, I noticed the engines began to stop in the clear of the main line, and people leaving the jobs, the employees leaving their jobs.
Q. Yes, sir. Now, prior to that time had things been operating in a normal and usual way?
A. Yes.
Q. All right, sir, go on.
A. Well, just a few minutes to 9:00 I left the cab track on the shop lead with my crew and fireman, and there had been rumors that there was to be a strike. And there was some discussion among my crew, the fireman in particular, whether the strike was legal, and so forth.
And, of course, I didn't know, I couldn't give any advice along that line. I hadn't—I didn't know a thing about it. So as we were leaving the cab track, after putting up the cab, I saw two men walking across from the North Yard towards the roundhouse, and

these two men were McCutcheon and A. R. Thomas.

Q. All right, sir. Now, what, if anything, did you do then?

A. Well, the fireman asked me what he should do and I told him if it was a legal strike that my advice would be just to observe the strike. And we pulled in the clear of the Huntsville main line a few minutes to 9:00 and the crew left the engine.

Q. Did you then leave the engine yourself?

A. I stayed on the engine and asked a crowd that accumulated around the engine if the strike was legal, whose strike it was, and I had a reply from the crowd that it didn't make any difference, that I had better leave the job.

Q. Who said that, if you know?

A. I identified the voice as C. S. Hawkins.

Q. Is he a fireman?

A. This was not my fireman but that was a fireman for the L&N.

Q. All right, sir. Now then, did you stay around there or did you leave the vicinity and go somewhere else?

A. After Mr. Alf Walker, Simrell, Eddie Houts, and several more came up to my engine, I got down with them and walked towards the Yard Office with the intention of asking the Trainmaster what to do. I didn't have a crew, no fireman, and everybody had quit work, it looked like. But the lights went out in the Yard Office, and so I just decided just to come on back to the roundhouse and turn in myself.

Q. When you got up to the Yard Office were there any people around on the outside of it that you saw?

A. Yes, there was a big crowd in front of the Yard Office, and Mr. Mitchell was leaving the office. I saw a number of people around there, including H. M. Baum, T. E. Davis, Barnett.

Q. Is that Bruce Barnett?
A. Bruce Barnett.
Q. All right, sir. Did you see M. L. Hall at any time that evening?
A M. L. Hall was in this crowd.
Q Did you see Howard Anderson at any time during Sunday afternoon?

Mr. Pettus:
We object to leading the witness, may it please the Court.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. You may answer that question.
A. I saw Howard Anderson in the crowd also.
Q. There at the Yard Office?
A. There in front of the Yard Office.

The Court:
Who was that now?

The Witness:
Howard Anderson.

Mr. Gibson:
Howard Anderson.

Q. Did you see any of the other men who are Defendants sitting here in the Courtroom around the Yard Office when you went up there Sunday night?

The Court:
That is after he left his engine?

Mr. Gibson:
Yes, sir.

A. No, sir.

Q. All right, sir. Now then, did you stay in the Yard, or what did you do then?

A. I went to the roundhouse with a group of engineers and mailed a trip card, and went to the parking lot and got in the car with Mr. Houts and rode over to the Rex's Cafe.

Q. All right, sir. Did you see any of these gentlemen who are Defendants in this case at or around the Rex's Barbecue or in that neighborhood?

A. Yes, I saw Mr. McCutcheon, Mr. Thomas, Parker, Howard Southerland around the Rex's Cafe.

Q. How long did you stay around the Rex's Cafe?

A. Well, I stayed there until some time after 3:00 o'clock the next morning.

Q. 3:00 o'clock Monday morning?

A. That's right.

Q. Did you go over during that time in the general vicinity of that little foot bridge that goes from Vanderbilt Road into the Railroad Company's Yard?

A. Yes, sir.

Q. Did you see any of the men who are the Defendants in this case at or near that foot bridge at any time?

A. I talked to McCutcheon at the foot bridge.

Q. Tell the gentlemen on the jury exactly where Mr. McCutcheon was standing when you had that conversation?

A. McCutcheon was standing to the right of the foot bridge, across to the L&N roundhouse. He was standing at the right. There was a car parked to the left, and I believe it to be Mr. Thomas' car.

Mr. Taylor:
I move to exclude that answer, what he believes.

The Court:
I sustain the objection. If he knows, why he can testify.

The Witness:
I know this to be Mr. Thomas' car.

Q. You know that is Reese Thomas' car?
A. Yes, sir.
Q. Now then, did you have any conversation with McCutcheon there at the foot bridge?
A. I talked to Mr. McCutcheon and advised him that if this strike was illegal that he was doing the wrong thing by going along with it.
Q. What, if anything, did he say to you?
A. He told me that he had attended a meeting at Shorty Parker's house, and that they had voted 6 to 14, 6 in favor of the strike and 14 against, but they had to strike anyway, and that he was not in favor of handling the situation in this manner, and that he would like for it to be handled in the proper channels.
Q. All right, sir. Mr. Hobson, do you know Mr. Sexton?
A. Yes, sir.
Q. Do you know Mr. Breedlove?
A. Yes, sir.

Q. Yesterday afternoon counsel for the Defendant on cross examination asked Mr. Sexton a question substantially like this, counsel asked Mr. Sexton whether or not Mr. Sexton had had a conversation with you in which he, Mr. Sexton, had said that he wanted, or hoped to get O. C. Breedlove into this lawsuit some way? I will ask you whether or not you ever had any such conversation with Sexton?

A. No.

Q. You were in attendance here at Court on yesterday, weren't you, Mr. Hobson?

A. Yes, sir.

Q. You were subpoenaed by the Defendants in the case, weren't you?

A. Yes, sir.

Q. Did you talk to the attorneys for the Defendants?

A. Yes, sir.

Q. Are you still under subpoena by them?

A. Yes.

Q. Did you receive a telephone call last night from any of these Defendants?

A. Yes.

Q. Who was that?

A. Mr. Breedlove.

Q. What did he tell you?

A. Well, he—he advised me that they had decided to drop me this morning.

Mr. Gibson:

You may examine him.

Cross Examination.

By Mr. Taylor:

Q. Now, Mr. Hobson, were you in the Courtroom when Court opened yesterday morning?

A. Yes, sir.

Q. Yesterday was Tuesday, wasn't it?

A. Yes, sir.

Q. Yesterday was Tuesday. Were you in the Courtroom any time Monday?

A. No, sir.

Q. Now, you were in Court at 9:00 o'clock Tuesday when the Court opened, is that right?

A. Yes, sir.

Q. You were not under subpoena by any person at that time, were you?

A. No, sir.

Q. Had anybody told you to come to Court that morning?

A. No, sir.

Q. You came of your own free will, and came in here and sat down, is that right?

A. Right.

Q. Now, Mr. Hobson, Mr. Byrd, one of the attorneys for the Defendants in this case some time during the day Tuesday asked to talk to you, didn't he?

A. Yes, sir.

Q. What time of day was that?

A. At the first recess.

Q. About 10:30 or something of that kind?

A. Yes, sir.

Q. You told him, didn't you, that you would not talk to him unless you were under subpoena, is that right?

A. I told him I didn't care to discuss the case with him.

Q. Didn't you tell him you would not discuss the case with him unless you were under subpoena?

A. I told him if he wanted me in here that he would have to subpoena me.

Q. All right, you told him that?

A. Yes, sir.

Q. Well, did he get a subpoena and serve it on you?

A. Yes, sir, he did.

Q. Where were you when he served it on you?

A. In the hall.

Q. Did you come back to the Courtroom then?

A. No, sir.

Q. So you were not absolutely correct when you told the jury in response to Mr. Gibson's question that when you were in the Courtroom yesterday you were under subpoena? That wasn't correct, was it?

A. I didn't say that.

Q. Well, they heard what you said. You deny you said that a minute ago?

A. I did not say that.

Mr. Taylor:

Your Honor, I would like to have his testimony read back, to refresh my recollection.

The Court:

That is right back at the beginning of the examination.

Mr. Taylor:

Right at the end of Mr. Gibson's direct examination.

The Witness:

I said I was subpoenaed by the defense.

The Court:

Can you turn back, Mr. Hale, and find it right at the end of the direct examination?

(The record was read to the Court and counsel out of the hearing of the jury.)

Q. Now, Mr. Hobson, when did you go to work Sunday? Sunday night that the work stoppage occurred is what I am referring to?

A. 3:00 o'clock.

Q. When was your shift due to get off?

A. 11:00.

Q. You say you had heard rumors that work stoppage might occur?

A. Yes, sir.

Q. When was the first time you heard that rumor?

A. Well, I had been hearing the rumors for a day at least before it occurred.

Q. At least a day. You had heard it some time Saturday then?

A. Yes.

Q. At least by Saturday?

A. By Saturday, Yes, sir.

Q. Did you pass that word along to anybody, that you had heard such a rumor?

A. I discussed it with my crew.

Q. With your crew?

A. Yes, sir.

Q. And you had switchmen and firemen and members of various crafts in your crew, is that correct?

A. Yes, sir, switchmen and firemen.

Q. Now, Mr. Hobson, I will turn this board around just a minute. In regard to your location there on that Sunday night, when you testified on direct examination that you first noticed something unusual, I am going to let this represent the washroom (indicating). Now indicate on the blackboard, please, sir, where your engine was stopped in relation to the washroom if you can. If this location should be up here, why put it up here?

A. This (indicating) is the washroom, and there is a track lead near the washroom, a cab track shop lead, that runs and turns up something like this (illustrating). There is a curve back around this way.

Q. All right, sir.

A. Then there is the Huntsville main line, this lead. This is the Huntsville main line. I stopped in the clear here, right here (indicating). I noticed other engines around in the Yard were stopped, and the crews leaving.

Q. What designation did you give the point where you stopped, the line you referred to there?

A. That is near the Yard Office.

Q. Didn't you refer to it as the—

A. I referred to it as the shop lead.

Q. As the shop lead?

A. Leading to the Huntsville main line.

Q. Does this lead or track—that is a track, when you say "lead"?

A. Yes.

Q. Does this stop here or go on further down?

A. It goes on down and connects with the North main line.

Q. When you stopped here were there any cars or cuts of cars located anywhere on any of these leads, or in front of you or back of you or on the side?

A. No, sir, these leads stay clear. They are clear of the Yard itself, leading to the tracks, and they are in the clear of cars.

Q. How far is it from the point where you were stopped to the washroom?

A. It is about two and a half blocks.

Q. About two and a half blocks?

A. Yes, sir.

Q. Do you have any judgment as to the distance in feet?

A. No.

Q. Well, you say it is roughly two and a half blocks, city blocks?

A. Yes, sir.

Q. Or the equivalent of it?

A. Yes, sir.

Q. I believe you testified you saw two men that night after you had stopped there?

A. No, I saw them on the way after I left the cab track, I saw them walking in the North Yard.

Q. You left the cab track?

A. Yes, sir.

Q. Which is the cab track?

A. The cab track is down here by the roundhouse.

Q. You left then in your engine going up this way (indicating)?

A. Yes, sir.

Q. Where did you see the two men?

A. They were coming from the North Yard.

Q. Would you put approximately the relative location where you saw them there?

A. The North Yard is over here and they were walking in here (indicating), two men were walking towards the roundhouse.

Q. All right. You were right here at the washroom, the washroom is in the roundhouse, is that right?

A. That's right.

Q. You were right here at the roundhouse when you saw them?

A. No, I was up half way probably, not half way, but just about half a block from the roundhouse.

Q. About a half a block from the roundhouse?

A. Yes.

Q. About how far were you from the two men when you saw them?

A. I was about 40 feet.

Q. 40 feet?

A. Yes, sir.

Q. Are you sure of that?

A. The tracks are about 40 feet from where they were walking.

Q. They were walking towards the washroom?

A. That's right.

Q. It was dark out there, wasn't it?

A. Well, there is lights, we have lights out there that light up the ground pretty well.

Q. Now, who did you say those two men were?

A. There was Mr. McCutcheon and Thomas.

Q. How was Mr. Thomas dressed on that occasion?

A. Well, he had on pants and shirt, and dress shoes.

Q. Could you tell the color of the shirt he had on?

A. No, I don't know the color of his shirt.

Q. Do you know whether he had on khaki pants or denim pants or wool pants or anything of that kind?

A. I would say it was wool pants.

Q. He had on wool pants?

A. Yes, sir.

Q. How about Mr. McCutcheon, how was he dressed?

A. About the same way.

Q. Now, Mr. Hobson, when is the first time that you told anybody about seeing these two men down there on that occasion?

A. Well, I—I told Mr. Robey I saw these men I believe.

Q. Did Mr. Robey send for you to come down and talk to him?

A. Yes, sir.

Q. Who sent for you to come down there and talk to him?

A. I believe Mr. Robey asked me to come down.

Q. Did he personally ask you to come down there?

A. I believe so. I believe he asked me to come down to see him.

Q. When was that?

A. I don't remember.

Q. Has it been six months ago?

A. I really don't know what date that was.

Q. Has it been at least six months ago?

A. Yes, it has been.

Q. Possibly more than that?

A. Possibly.

Q. Was it shortly after this work stoppage occurred?

A. Not shortly afterwards, no.

Q. All right, where did you see Mr. Robey?

A. I went down to his office.

Q. Where was that?

A. Down to the Comer Building, I think.

Q. Did he tell you he was an L&N employee?

A. He told me he was employed by the L&N Railroad Company.

Q. Did he tell you he was formerly an FBI man?

A. Yes, sir.

Q. I believe you testified that your crew began to ask you for advice?

A. Yes, sir.

Q. Is that correct?

A. The fireman asked me for advice.

Q. What was his name?

A. The fireman was a Birmingham Mineral Fireman, not on my Division.

Q. You had been working with them there all day, hadn't you?

A. I had worked with them; not all day.

Q. Well, all your shift I am talking about, is that right?

A. I worked with them from 3:00 o'clock to 9:00.

Q. Had you ever worked with them before?

A. I don't believe I had.

Q You just happened not to remember his name, is that right?

A. I probably knew his name. I mean I don't remember.

Q. They didn't ask you anything about anybody except the Defendants in this case, did they?

A. Well, yes, they just asked me what I knew about it.

Q. And the only thing you told them was about people that you knew had been named as Defendants in this lawsuit, isn't that right, Mr. Hobson?

A. No, sir.

Q. You didn't tell them who that fireman was, did you?

A I told him I saw Mr Walker out there, as well as I saw Mr. Thomas, and I told him I saw Mr Houts up there, as well as Mr Baum And I named over Mr Mitchell and a number of others that I saw.

Q. All right, when your crew asked you for advice, what did you tell them?

A. I told him I wouldn't give him any advice, that I didn't have anything official on a strike, nobody notified me, and that it was all rumors, so far as I was concerned.

Q. You told them to make up their own minds, and do what they wanted to, in effect, didn't you?

A. I told them if the strike was legal that I would observe the strike.

Q. Did you tell them to leave or not to leave the premises?

A. I told him to use his own judgment about leaving.

Q. That is what I asked you a minute ago, if you didn't tell them to use their own judgment?

A. Yes, sir.

Q. Well, did they use their own judgment and decide to leave after you told him that?

A. He left the engine.

Q. Did the whole crew?

A. The fireman left the engine, and the switchman left.

Q. That left you there alone, is that correct?

A. That's right.

Q. What time was this?

A. It was about 9:00 o'clock.

Q. About 9:00 o'clock?

A. Yes, sir.

Q. That is your best judgment as to the time, is that correct?

A. That's right.

Q. Were you just sitting there by yourself on the engine?

A. No, sir, I stood out on the deck of the engine.

Q. I believe you testified a moment ago that the crowd of men came around your engine, is that right?

A. Yes, sir.

Q. How close did they get to the engine?

A. They came up to the foot board of the engine.

Q. Where were you?

A. I was on the back part of the engine, on the deck of the engine.

Q. On the deck of the engine?

A. Yes, sir.

Q. Could you see the crowd without any obstruction from where you were?

A. Yes, sir.

Q. Who did you see in that crowd?

A. Well, there was Walker, Simrell, Eddie Houts, Hawkins, that's some of them I remember in the crowd.

Q. You don't remember others, any others?

A. No.

Q. Do you say that from the crowd that Eddie Houts and Mr. Simrell were in that somebody hollered out "You better come on out", or words to that effect?

A. I asked the men if the strike was legal, and this voice out of the crowd says that it didn't make any difference whether it was legal or not, "You better come on out."

Q. That was the crowd that Eddie Houts was in and Mr. Simrell, is that right?

A. The same crowd.

Q. From which this voice came?

A. Yes, sir.

Q. So far as you know it could have been Houts talking, is that right?

A. The voice was that of Mr. Hawkins.

Q. You didn't see him make any statement, did you?

A. I heard his voice, and I recognized it.

Q. You heard what you thought was his voice, is that right, Mr. Hobson?

A. I heard Mr. Hawkins voice, and I saw him in the crowd.

Q. You didn't see him make that statement, did you?

A. No.

Q. And you are an expert on recognition of voices?

A. Yes, sir.

Q. Oh, where have you had training in that field?

A. Well, I have been in this world forty some odd years, and I have had quite a bit of experience listening at voices.

Q. You make it a practice to try to identify all the voices you hear, is that right?

A. I try my best to recognize voices that I hear.

Q. And the only reason you say it was Hawkins and not somebody else was because in the dark, without being able to see him, you say you recognized his voice?

A. I recognized his voice, and I saw him in the crowd.

Q. All right. Did the crowd leave after that unidentified voice spoke up?

A. Yes, sir.

Q. What did you do?

A. I made the statement that I left with Mr. Simrell, Mr Houts, Mr. Walker, and walked to the roundhouse and mailed a trip card.

Q. With the exception of this voice from the darkness, nobody else told you to leave out there, did they?

A. No, sir.
Q. Did you go out the gate with Mr. Simrell?
A. I went out the gate with Mr. Eddie Houts.
Q. Did you see Mr. Simrell go out the gate?
A. I don't recall seeing him go out.
Q. Do you know which gate Mr. Simrell went out?
A. No.
Q. What gate did you go out?
A. I went out the roundhouse gate.
Q. You went out the roundhouse gate?
A. Yes, sir.
Q. Did Eddie Houts and the rest of the crowd go out the same gate with you?
A. I was with Mr. Eddie Houts.
Q. When you got to the Yard Office were the lights on or off?
A. When I got to the Yard Office the lights were on. They went off really before I got there.
Q. Well, which was it? Let's get it straight.
A. I said they were on.
Q. When you got there?
A. Before I got there; and by the time I got there the lights went off, as I was approaching.
Q. How far were you from it when they went off?
A. Oh, I would say 30 feet.
Q. And the lights went off and you came on up there in the darkness, is that correct?
A. No, I turned around and come back.
Q. Oh, you turned around and came back?
A. Yes, sir.
Q. Where?
A. I came back with Mr. Simrell, Mr. Houts, Mr. Walker passed my engine and on to the roundhouse.
Q. Went on to the roundhouse?
A. Yes, sir.

Q. When you were there about 30 feet from the Yard Office I believe you testified that is where you saw Mr. Ben Mitchell, out in front, is that correct?

A. He was leaving the Yard Office.

Q. Then it was after you saw him that the lights went out, is that correct?

A. About the time I saw him the lights went out.

Q. He was leaving the Yard Office as you saw him?

A. Yes.

Q. Was he already outside?

A. I beg your pardon?

Q. Was he already outside?

A. No, he was in the door.

Q. Did he have his lunch in his hand?

A. I believe he did.

Q. He was headed in the direction of the outside, is that true?

A. Yes.

Q. Now, you turned around and didn't go to the Yard Office, is that correct?

A. No.

Q. You turned around and went back to the roundhouse?

A. In the opposite direction, towards the roundhouse.

Q. What did you do when you got to the roundhouse?

A. Mailed a trip card.

Q. Who did you see down there?

A. Nobody was in the roundhouse.

Q. There was nobody in there at all?

A. No, except men that went in the roundhouse with me, Mr. Walker, Mr. Houts, and Mr. Simrell.

Q. Now, Mr. Jordan's office is in the roundhouse, isn't it?

A Yes.

Q. Was he there?

A. No.

Q. He is the gentleman that called their crews, isn't he?

A. Yes, sir.

Q. Was there anybody in the office at all?

A. No.

Q. Shut down tight?

A. Yes.

Q. After you mailed in your trip card, if that is the proper terminology, did you then leave?

A. Yes, sir, I went to the Parking lot near the roundhouse office or washroom.

Q. Was that inside of the L&N premises?

A. Inside of the L&N premises.

Q. You got in the car?

A. I got in Mr. Eddie Houts' car and drove out the roundhouse gate to the Rex's Cafe.

Q. What time was this?

A. Oh, about 9:30 or 40 I imagine.

Q. Now, you left the roundhouse gate, is that right?

A. I drove to the gate.

Q. And went to Rex's Barbecue?

A. Yes, sir.

Q. Where did you park your automobile?

A. I parked it there outside of Rex's Cafe.

Q. Did you go in Rex's Cafe?

A. Yes, sir.

Q. How long did you stay in there?

A. Well, I stayed around Rex's Cafe, in and out, I drank coffee, and talked to Mr. Walker and a num-

ber of people there, the proprietor, and Mr. Parker. I was in and out of there a number of times until around 3:00 o'clock next morning.

Q. Didn't you say a minute ago, Mr. Hobson, if I understood you correctly, that as you came out of there you saw Mr. McCutcheon standing by this footbridge?

A. I didn' tsay I was coming out of there when I saw him, but I saw him some time while I was there and talked to Mr. McCutcheon while he was at the footbridge.

Q. Where is the footbridge in relation to Rex's Barbecue?

A. Directly in front of Rex's Barbecue.

Q. Directly in front of Rex's Barbecue?

A. Yes, sir.

Q. How long had you been in Rex's Barbecue before you saw Mr. McCutcheon over there?

A. I don't know.

Q. You say a crowd of people were standing around Rex's, or did you say that?

A. Yes, I said that.

Q. Were there people in that crowd from all the crafts that work out at Boyles there?

A. Yes.

Q. Now, about what time did you go over there to see Mr. McCutcheon?

A. It was somewhere between 9:00 o'clock and 3:00 o'clock.

Q. Is that the best that you can give us, 9:00 to 3:00?

A. To be sure, that's the best I can give you.

Q. You talked to a lots of other people that night too, didn't you?

A. Yes, sir.

Q. Do you remember all of those conversations?

A. I don't believe I remember all of the conversations, no.

Q. Do you remember any of them in the same detail you remember the one you had with Mr. McCutcheon?

A. Well, I could, if you ask me who it was and remind me of who I talked to, I could probably remember, but it would be—there was of no importance. I didn't,—I didn't talk to anybody of any importance.

Q. Did you attach any importance to the conversation with Mr. McCutcheon?

A. I sure did.

Q. Or did Mr. Robey tell you it was important?

A. I sure did attach some importance to it.

Q. Did he tell you that there was a work stoppage going on, is that correct?

A. Yes.

Q. You already knew it, didn't you, you had been hearing about it for six hours?

A. Well, it looked like it, to be a work stoppage.

Q. There wasn't anything new to you when you talked to McCutcheon about it, was there?

A. No.

Q. Were you paid when you went down to Mr. Robey's office?

A. No.

Q. You didn't lose any time for that, did you?

A. No.

Q. Well, you got your pay for the time you spent down there, didn't you?

A. No.

Q. Did you lose some time for it? Let's get it straight.

A. No.

Q. I can't understand it.

A. I didn't lose any time, and I didn't get any pay for it.

Q. Well, were you working when you went down there?

A. No.

Q. It was a work day for you?

A. Yes.

Q. And you were not docked any for the time that you spent in Robey's office, instead of on the railroad, were you?

A. I was on the job. I go to work at 11:00 o'clock, and I was off all during the day. I have 16 hours off,

Q. You went to see Mr. Robey in your off time?

A. On my own time.

Q. You volunteered to go down there to see him?

A. Yes, I volunteered to go down there.

Q. Now you don't like Reese Thomas at all, do you?

A. Reese Thomas has been a very good friend of mine up until about the strike, about the time of this work stoppage, and I haven't had very much to do with him since that time.

Q. You were looking for an opportunity to come up here and say something that would hurt him, aren't you?

A. I tried every way in the world to keep from coming up here—

Q. You came up here Tuesday morning voluntarily?

A. —as a witness.

Q. No, sir-ree, you just told me a minute ago you came up here of your own free will, came in here as a member of the public and sat down in this Courtroom, is that right?

A. I said I didn't come up here on my free will as a witness.

Q. Who told you to come up here Tuesday?

A. I came up here as a spectator.

Q. All right, sir, that's what I asked you a minute ago. Now, you are also a very good friend of this man Johnny Sexton, aren't you?

A. Very good.

Q. Very close to him, aren't you?

A. Not any closer than I am to a lot of my friends.

Q. All right, you are close to him. You saw him leave. You talked to him after he testified in this Court, didn't you?

A. I spoke to him and—well, I had a cup of coffee with him since then.

Q. That's right, and you talked to him about his testimony, didn't you?

A. I haven't asked him anything about his testimony.

Q. Well, did he volunteer something about it?

A. Well, he did mention that he made his testimony.

Q. And he told you what he said, didn't he?

A. He didn't tell me all.

Q. He told you some of the big officials of the L&N Railroad in here seemed to like his testimony, didn't he say that to you?

A. No.

Q. Now, in this same conversation, when did it take place, the one I am referring to, about, after you testified?

A. Well, I saw Mr. Sexton at 10:30.

Q. Where did you have that coffee?

A. At a restaurant across the street.

Q. I will ask you if you didn't say to Mr. Sexton at that time and place this, or this in substance "I hope I get a chance to get on the witness stand, I'll really let them have it", or "I'll really hurt them"?

A. No.

Q. Did you say anything like that?

A. No.

Q. Didn't you say anything at all about the prospects of your testifying?

A. I told him I tried every way in the world to keep from being here as a witness.

Q. And the way you tried—

A. Until the defense subpoenaed me.

Q. And the way you tried was to voluntarily come up here as a spectator Tuesday morning and sit down and watch what was going on, is that what you tell the jury?

The Court:

That is an argument, Mr. Taylor.

Mr. Taylor:

All right.

Q. Now, you said—you called Mr. Breedlove's house last night, didn't you, Mr. Sexton? Let's get it straight.

A. My name isn't Sexton.

Q. I beg your pardon. Excuse me, Mr. Hobson, I'm sorry. So you called Mr. Breedlove, didn't you, Mr. Hobson?

A. I did.

Q. And his daughter answered the phone, didn't she?

A. Yes.

Q. When you told these gentlemen a minute ago that Mr. Breedlove called you, that was a mistake wasn't it?

A. No.

Q. Well, didn't you call Mr. Breedlove?

A. Yes.

Q. You just got through telling me—

A. I called Mr. Breedlove after he called me.

Q. You asked Mr. Breedlove to please see if he could do anything, what he could to get you out of coming to Court, isn't that right?

A. Mr. Breedlove told me that they would drop me.

Q. You asked him to, didn't you, sir?

A. No, I didn't ask him to.

Q. You didn't say anything about that at all?

A. No.

Q. You say that didn't happen?

A. He told me in his conversation when he first called me that they had decided to drop me.

Q. That was in response to your request that you be allowed to be dropped, isn't that right?

A. I didn't make any request.

Q. Well, he didn't tell you to come up here today, or the attorneys for the Defendants, did they?

A. I told him I had a subpoena to come up here, and I was going to be here until somebody in authority told me not to.

Q. Didn't Mr. Pettus notify you this morning that you were not going to be needed as a witness for the Defendants?

A. Mr. Pettus informed me that he would not need me.

Q. All right; you consider him, so far as that subpoena is concerned, as a person in authority, don't you?

A. Yes.

Q. Did you report this conversation with Mr. Pettus to anybody else?

A. Yes.

Q. To whom?

A. I told Mr. Sexton I believe that they wasn't going to use me this morning.

Q. Did you tell anybody else?

A. And—I don't believe I told anybody else.

Mr. Taylor:

I believe that's all.

Mr. Gibson:

That's all, Mr. Hobson. Thank you.

The Court:

You can come down, Mr. Hobson. The witness can be excused unless there is objection.

(Witness excused.)

Mr. Simpson:

Your Honor, we are through with our individual witnesses, except in rebuttal. We may have two in rebuttal, two or three.

We would like to now put on some testimony—

Mr. Pettus:

I didn't understand that.

Mr. Simpson:

We are through for the time being. We will probably have a couple of witnesses in rebuttal; if we may now suspend at this time, and we would like to put on our testimony as to damages at this time.

The Court:
All right, you may proceed.

Mr. Simpson:
Mr. Breidenthal.

WILLIAM M. BREIDENTHAL, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Smith:
Q. Mr. Breidenthal, will you state your full name so the Court Reporter can get it, please, sir?
A. My name is William M. Breidenthal.
Q. I wonder if you would spell that for us?
A. B-r-e-i-d-e-n-t-h-a-l.
Q. Where do you live?
A. Louisville, Kentucky.
Q. Who are you employed by?
A. The Louisville & Nashville Railroad Company.
Q. What job do you have with the Railroad?
A. I am Assistant General Freight Agent in the Traffic Department of the L&N Railroad.
Q. Do you work in the General Offices in Louisville?
A. Yes, sir.
Q. Does your assignment constitute you a general officer of the Railroad?
A. Yes, sir.
Q. Now, how long have you been with the Railroad?
A. Some 28 years.

Q. Now, are you familiar with the strike here in Birmingham that affected this area between October 23rd and 26th, of 1955?

A. I am.

Q. You were not present here in Birmingham?

A. No, sir.

Q. All right, sir. Now, I believe that to some extent that affected the Boyles Yard?

A. Yes, sir.

Q. Are you familiar with the Boyles Yard?

A. Yes, sir.

Q. Tell these gentlemen what the Boyles Yard is?

A. The Boyles Yard is our Yard for Birmingham, and all trains moving from points north of Birmingham to points south of Birmingham on our main line, and also from points south of Birmingham to points north of Birmingham on our main line must go through the Boyles Yard.

Q. What do you call that type of installation out there?

A. It is a Terminal.

Q. A Terminal?

A. Yes.

Q. You are talking about through freight?

A. Through freight.

Q. Shipments?

A. Yes, sir.

Q. None of them just go straight on through without going into Boyles?

A. That's right.

Q. Now, during the period that Boyles was tied up in October, of 1955, did the Railroad have at various points north and south of Birmingham a number of cars of freight committed to it for handling that it

had routed through Birmingham, but hadn't gotten through here?

A. They did.

Q. Points north and points south?

A. That's right.

Q. All right.

A. During the period of the strike there continued a movement of cars at points north and south that had to move through there, they having been committed beforehand.

Q. So that the Railroad found itself when the strike started with cars that had been planned to move through Birmingham?

A. Correct.

Q. Now, did the Railroad, because of the strike, reroute those cars to go around Birmingham?

A. Yes, sir, it was absolutely necessary that we do everything in our power to fulfill our obligations to the public in moving the traffic through to the destination.

Q. All right, sir.

Mr. Taylor:

We object and move that be excluded as a voluntary statement. He didn't answer the question.

The Court:

I will exclude that gentlemen.

Q. I will ask you then if it wasn't necessary for the Railroad to reroute those cars to get the freight where it was supposed to go?

A. Yes, sir.

Q. Now, let me inquire if I may, whether the Railroad has an established practice or procedure in the

regular operation of its business of having some report made of cars rerouted when for some reason service is interrupted?

A. Yes, sir.

Q. What do you call that record?

A. It is a reroute report.

Q. Does the original or a copy of that come to the office that you are in?

A. Yes, sir.

Q. Is that made in all instances where on the line there are interferences with service that require cars to be rerouted?

A. Yes, sir.

Q. Would the same type of treatment be given to a bridge being out?

A. Yes, sir.

Q. All right, sir. Now, have you, preliminary to coming here to testify, have you segregated the reroute reports and selected the reroute reports for the Birmingham area during the period October 23rd to 26th?

A. Yes, sir.

Q. Are they here in Court?

A. They are here in Court.

Q. Where are they?

A. They are in the carrier back there in the basket.

Q. That big hopper back there?

A. That's right.

Q. In the Courtroom here?

A. Yes, sir.

Q. Some, would you say, 3 feet off the floor?

A. Yes, sir.

Q. Now, how many cars have you determined were rerouted around Birmingham because of the work stoppage during those days?

A. I have a record of 427.

Q. 427?

A. Yes, sir.

Q. Now, you say you have a record?

A. Yes, sir.

Q. Now, would you tell us in very general terms what you have done here, what this record is that you are holding in your hand here? I believe you brought this in to the witness stand with you, did you not?

A. Yes, sir.

Q. All right.

A. I have tabulated each car number, the commodity that was included in that car, the initial point of origin and the final destination of the car.

Q. All right, sir. Now this, taking a car number, commodity, point of origin, destination, did you get that information from the reroute report?

A. From the reroute report.

Q. That are here in the Courtroom?

A. That are here in Court.

Q. And the original route?

A. Yes, sir, the original route and the reroute are shown.

Q. By "original route" you mean the route that the car would have gone normally?

A. That is correct.

Q. Because the route—what do you call it, if, in railroad language, when a car is started off, it is routed from the beginning, isn't it?

A. Routed from point of origin to the destination via the road set up to haul the traffic.

Q. That is what the column you have which says "Original route" means, is it?

A. Original route, that is correct.

Q. All right, sir. Now, you have in another column over here the "Reroute"?

A. That is correct.

Q. That is the route it actually traveled?

A. That is correct.

Q. You take that information, do you, from the reroute reports?

A. Reroute reports, that is correct.

Q. I believe you have shown here the miles that were traveled by first the original route, and over here in another column the miles that are traveled on the L&N on the route as it finally went?

A. That is correct.

Q. Now, that information, I will ask you did that come from the reroute report?

A. That was compiled from the distance tables of the L&N Railroad.

Q. Do you have that?

A. I have the book right here.

Q. Now have you been able to show the difference in the miles traveled on the L&N because of the work stoppage?

A. That is correct.

Q. For each car?

A. That is correct.

Q. All right, sir. Now if the Railroad found it necessary to reroute a car, let's take an example, and you tell me whether it is a correct example or not, or whether it would be an appropriate one.

Take a car that was in Nashville and had been routed to New Orleans. Now do you have cars that were found in that position?

A. Yes, sir, we do have.

Q. What was the reroute followed by those cars?

A. Those cars were rerouted at Nashville, turned over to a connecting railroad for routing to come back to our line at Montgomery, Alabama.

Q. Where, tell us geographically, some of us are not familiar with all of the railroad lines in the area, where generally did that shipment go, did that car go?

A. That car went to Atlanta.

Q. That car went to Atlanta on what line?

A. Over the NC&StL Railway.

Q. That is a separate road from the L&N?

A. That's right.

Q. Then how did it get from Atlanta to Montgomery?

A. From Atlanta to Montgomery it generally moved over what is known as the West Point route.

Q. Is that a separate line from the L&N?

A. It is a separate and distinct line.

Q. All right. I will ask you if, where it is necessary to have a car routed over a separate road, was it necessary to pay and did the Railroad pay a part of the freight revenue received to that road for carrying out the hauling?

A. In all instances the road over which the traffic, or roads over which the traffic was rerouted, received regular pay on an agreed basis of divisions for the services performed.

Q. All right now, let me ask you this before it passes out of my mind. Did the Railroad charge its customer any extra because of the extra miles it had to be hauled?

A. No.

Q. Have you put on here in each instance the revenue that was paid over to another road?

A. Yes, sir, I have. I have figured the revenue that the L&N would have received for its services had the shipment moved as originally routed.

Then I have had the auditor to compile the actual revenue that we did get for the services that we did perform on that car.

And the difference between those two is the amount of money out of what would have been L&N revenue that we had to pay to other lines for performing this service, reroute service, for us.

Q. That was money paid to another line out of the money that the L&N would have gotten?

A. Would have gotten.

Q. Had the shipment gone through normally?

A. That is correct.

Q. Is that the figure shown in the column marked "Difference"?

A. Marked difference in L&N revenue, yes, sir.

Q. These reroute reports and records that you have worked from in compiling this summary you say are here in Court?

A. Yes sir.

Q. Do you have a report covering every one of the 427 cars?

A. Yes, sir.

Q. Would you say that those records are voluminous?

A. They are quite voluminous. The official record is, of course, very voluminous. The copied record from that which I had prepared by our auditor is a statement of some 407 individual sheets or slips.

Q. Your reroute reports that you have here, they are copies of the original reports?

A. Reroute reports, yes, sir.

The Court:

Have those particular reports been secured from the other reports?

The Witness:

On the reroutes, yes, sir. They are made up specially for reroute.

The Court:

Have they been segregated from the mass of reports here in Court, so that you could put your hands on them?

The Witness:

Yes, sir.

Mr. Smith:

Step back there and get them. Go get the reroute reports, if you will, please, sir.

The Court:

I just wanted to know if they are available to the other side.

The Witness:

These are the reroute reports on all of the cars. They are not made up in exactly the same form by each rerouting agency, but if the Judge would like to see one—

The Court:

No, I just wanted to know if you had them available. I am not asking you to go into them, just if they are available to the other side.

Q. Do you have in your hand here now as you sit on the stand a reroute report covering every one of these 427 cars?

A. Yes, sir.

Q. Have you prepared a summary of the information there that is tabulated in this six page document?

A. Yes, sir.

Q. That you have brought with you here?

A. Yes, sir.

Mr. Smith:

If Your Honor please, at this time we would like to have this identified as the next exhibit for the Plaintiff.

Mr. Pettus:

We want to object to that on the ground that it is incompetent, irrelevant, and immaterial, not shown that this witness personally prepared it, or has personally checked it. It is not shown that the records, or the records from which it was prepared are kept in the regular course of business. The record is not properly identified and the person keeping the record is not properly identified, and we object to it.

The Court:

You may have to qualify him further in the light of those objections.

(Plaintiff's Exhibit No. 2 was marked for identification.)

Q. Plaintiff's Exhibit No. 2. All right, sir, referring to Plaintiff's Exhibit 2, consisting of some six pages

now, I will ask you if that summary was prepared in part by you personally?

A. In part prepared by me personally, and all reviewed by me.

Q. You have personally checked each entry on there?

A. Yes, sir.

Q. And any work done by clerks you have personally checked?

A. Correct.

Q. And you are in the Agent's part of the System, that side of the Railroad where the reroute reports would come to you and be in your office?

A. Yes, sir.

Q. And you are the man that deals with reroute reports?

A. That is correct.

Q. And the records from which this information was taken, are all of those records regularly kept in the Railroad's business?

A. Yes, sir.

Q. And is the keeping of those records a regular part of the Railroad's business?

A. Yes, sir.

Q. You did not personally make up the reroute reports, as I understand?

A. That is correct.

Q. But the reroute reports is a permanent record kept under your custody in the Railroad?

A. Yes, sir.

Mr. Smith:

We offer it at this time

Mr. Pettus:
We object on the same ground.

The Court:
Have you individually, personally, checked that summary, and do you know it to be correct?

The Witness:
Yes, sir.

The Court:
I overrule the objection.

Mr. Pettus:
On the further ground that all of the records from which the summary was made are not in Court.

The Court:
I understand you have all of the records in that box.

The Witness:
I have the reroute reports here and the compilation furnished by our auditor showing the actual settlements. And I have the figures showing the divisions which were compiled by me and under my supervision showing the revenue that we would have received by the route the shipment was originally routed, based on tariff rates, freight collected and agreed divisions.

Q. Do you have the tariffs?

Mr. Pettus:
There is no disbursements shown on any of these reroute records, are there?

The Witness:
There is no what?

Mr. Pettus:
No disbursements. Do you have any checks here showing you paid anybody? That is shown on the record there, isn't it?

The Witness:
This record—

Mr. Smith:
You mean money—

Mr. Pettus:
Money paid.

The Witness:
This record shows the L&N money.

Mr. Pettus:
L&N money received?

The Witness:
L&N money received.

Mr. Pettus:
All right.

The Witness:
And the L&N money that we would have received had the shipment moved by the route originally planned.

Mr. Pettus:

If I may examine him on that. As I understand you, this sheet that you have prepared shows money you claim to have paid out on account of these cars, is that it?

The Witness:

The difference between what we got and what we would have got is money that was paid out to other lines.

Mr. Pettus:

Your Honor, we object on the ground these route records don't show payments to the other lines. It is one of the main things he had got on there.

Q. In the procedure by which your settlements are made with other lines, tell me which line it is that prepares the settlement?

A. The destination line prepares the settlement.

Q. All right. So that where the car did not terminate, its haul did not have its destination on the L&N, then your Company would not have made that settlement record?

A. No, sir.

Q. Isn't that right?

A. Yes, sir.

Q. But you are furnished with a breakdown of the settlement, furnished by the destination carrier?

A. That's right.

Q. All right.

A. The destination carrier then sends us an abstract of settlement that shows the money that is allowed to each road for the service that it performs in connection with that shipment.

Mr. Pettus:
Are those records in Court?

The Witness:
Those are in voluminous records on file in our Auditor of Freight Accounts Office. It would take a whole carload to get them here. There will be four or five of the shipments in one book, and there will probably be a thousand of those books.

Mr. Pettus:
We object on the ground those basic records are not in Court and have not been made available.

The Court:
They are in Louisville, are they?

The Witness:
They are in Louisville.

The Court:
Let me ask you this, do you make payments to other railroads, in other words, you handle all transactions—do they have a uniform practice with respect to that?

The Witness:
A uniform practice.

The Court:
Is that prescribed by the Interstate Commerce Commission?

The Witness:
By the Interstate Commerce Commission, yes, sir.

The Court:
These balances, the payments are made, are they made on settlements between companies?

The Witness:
Between roads, yes, sir.

The Court:
You don't individually send them a check for each car?

The Witness:
No, sir.

The Court:
Or anything like that. At the end of the month or any settlement period you settle up car balances, and all balances?

The Witness:
That is correct.

The Court:
Overruled.

Mr. Pettus:
We except. And on the further ground that there is nothing to show those settlements have in fact been made.

The Court:
Overruled.

Mr. Pettus:
We except.
Q. Now, let me ask you this, if I may.

Mr. Pettus:
May I examine this, Your Honor?

The Court:
Have you offered it?

Mr. Smith:
Yes, sir, I have offered it.

Mr. Pettus:
May I examine this just a minute?

The Witness:
Yes, sir.

The Court:
We are now at recess time for lunch. And, gentlemen, remember the Court's admonition. Be back at 1:30.

(Whereupon, at 12:15 p. m. a recess was taken until 1:30 p. m., of the same day.)

Afternoon Session, 1:30 P. M.

The Court:
Go ahead.

WILLIAM M. BREIDENTHAL, the witness on the stand at the time of recess resumed and testified further as follows:

Direct Examination.

By Mr. Smith:

Q. Now take this Exhibit 2, I believe it is, and give me the total amount shown on your summary there of revenues paid or credited to other railroad lines due to that work stoppage. I believe that would be on the last page there.

A. That total is $63,994.77.

Q. Now, that is what other lines got on those cars that were rerouted, is that correct?

A. That is what they got out of what we would have gotten.

Q. That's right. Of course, that figure as it is shown there represents what they got, and does not take into consideration the fact that the L&N in some, and perhaps many instances, hauled the car less distance than it would have done had the car gone along the original route, is that right?

A. That is correct.

Q. Have you made an allowance for that?

A. Yes, sir, I have. I have taken the miles that we saved and computed the cost of that roadhaul service, based on our average cost of roadhaul handling, 2.79 mills per gross ton mile.

Q. Have you then taken that into consideration in your tabulation there?

A. In the final tabulation I have. That is shown as roadhaul savings in the next to last column of that statement, and which is totaled on the last page also.

Q. All right, sir. Now, have you taken into consideration the extra Terminal handlings? Or let me withdraw that. These cars that have been routed through this area, many of them I take it, would not have been handled, say from Cincinnati to New Orleans, they would have gone straight through on the trains, is that right?

A. They would have gone straight through on our line. They would have gone into a Terminal and out of that Terminal, but they would not have had an interchange service with another road there.

Q. By being required to reroute these cars, did you in some instances, as shown in your summary there, have extra Terminal handling?

A. Yes, sir. For example, a car, if we rerouted it at Nashville and gave it to the NC&StL we would have to take it out of our Train Yard and take it and interchange it with the NC&StL.

And similarly when the West Point route takes it, it came back to us at Montgomery, when they got it down to Montgomery we had to have a Terminal interchange down there.

Q. I see.

A. We have shown in a column here the instances where extra Terminal, interchange Terminals were performed, and have shown the cost of those at the rate of $7.39 per car, which is our average cost of all interchange Terminals on the L&N for the year 1955.

Q. Have you taken into consideration any savings in Terminal handling that you might have had the benefit of because of rerouting?

A. Yes, sir. In several instances, as indicated on the statement, the traffic moving via the normal route as originally set up would have required that the L&N perform the destination Terminal service, that is make delivery to the industry.

In rerouting it another road made that Terminal delivery and we have set up a charge of $21.10, which is the average cost of destination Terminal handling to the L&N for the year 1955, and that cost has been credited against the difference over here so as to not overstate the amount that we are outstanding.

Q. Now, have you carried forward the figures that you have told us about where you have taken into consideration the miles hauled saved and these Terminal handlings, and do you have them developed at a figure that represents the net amount that the L&N lost on account of rerouting these cars.

Mr. Pettus:

We object to that statement.

A. Yes, sir.

Mr. Pettus:

As to what the L&N lost, as a conclusion, incompetent, irrelevant and immaterial.

The Court:

I will let him show the outlay in that regard.

Q. Tell us, if you will, the figure that is in that exhibit there that represents the net figure of the $63,000 after you made these adjustments you have told us about?

A. The net figure is $51,054.13.

Q. Now, you have taken into consideration the Terminal handlings for each car individually?

A. That's right.

Q. Is that right?

A. Yes, sir.

Q. And you have taken into consideration the road-haul miles saved for each car individually?
A. That is correct.
Q. The $51,054.13 is the total of the 427 cars?
A. That is correct.

Mr. Smith:
I believe that is all.

Cross Examination.

By Mr. Pettus:
Q. Let me have that exhibit there.
A. Yes, sir. You don't mind if I get an extra copy out so that I can refer to it.
Q. If you have one.
A. I do.
Q. Now, what is your title?
A. Assistant General Freight Agent.
Q. Assistant General Freight Agent?
A. Yes.
Q. Now, where is your office physically located?
A. Louisville.
Q. Where is your personal office?
A. It is Room 400, L&N Building.
Q. Room 400, L&N Building?
A. Yes, sir.
Q. And is that at Louisville?
A. At Louisville, Kentucky, yes, sir.
Q. Is that where all of the offices, head offices of the L&N are located?
A. No, we do have some head offices in New York.
Q. In New York?
A. Yes.

Q. But of the Louisville offices, is that in the main building at Louisville?

A. That is correct.

Q. Now, as Assistant General Freight Agent, who is your next man, in the chain of command who is your next man down, who is under you?

A. Well, there is quite a chain from the President down.

Q. I am talking about from you down.

A. From me?

Q. Yes.

A. Above me, directly—

Q. I am asking you about down first.

A. Down?

Q. Yes, sir.

A. Another Assistant General Freight Agent.

Q. Another Assistant General Freight Agent?

A. Yes, sir.

Q. Then who is below him?

A. An Assistant to the General Freight Agent.

Q. An Assistant to the General Freight Agent?

A. Yes, sir.

Q. And are these records kept in that building?

A. All of the records are kept in the building.

Q. All of them are kept in the building?

A. Yes, sir.

Q. What do you call these records that you have up here right by you on the stand, the ones they brought up here, the routing slips?

A. One is the statement of reroutes.

Q. Statement of reroutes?

A. Yes, sir.

Q. Is that kept under, by employees that are under your general supervision there?

A. Yes, sir.

Q. How far removed from you is the employees that actually keeps that record?

A. The record first comes to me.

Q. The record first comes to you?

A. Yes, and after I have finished with it it is placed on a file, and kept in our file room, readily accessible to me at all times.

Q. The rerouting?

A. That is correct.

Q. Slip?

A. Yes, sir.

Q. Now, on those reroute slips, do you handle the accounting of settlements with other railroads?

A. Not on the reroute slips.

Q. Do you handle that at all separately, is that part of your duties?

A. No, the actual settlements between railroads are handled by the Accounting Department.

Q. That is handled by the Accounting Department?

A. That is correct.

Q. Is that correct?

A. Yes, sir.

Q. These figures that you have obtained and put on this Plaintiff's Exhibit 2 are not kept by any employee under your general supervision, are they?

A. I don't know what you mean by that.

Q. Well, what I mean by that is that you do not handle the settlements, and no employee directly responsible to you handles the settlements between railroads, does he?

A. No.

Q. That is done in the Accounting Department?

A. That is in the Accounting Department.

Q. And that is an entirely different Department from what you have, isn't it?

A. That is correct.

Q. And you don't know of your own knowledge whether any settlement has ever been made, that you have set up on this paper, do you?

A. Yes, I do.

Q. How do you know?

A. Because in several instances I have had to go back and check this back from the records.

Q. In several instances?

A. They were furnished at my request by the accounting people that do have charge of the records.

Q. Have you checked each one of the 437, or whatever it is, instances here yourself personally?

A. I have checked the divisions which we were allowed, to see that we were allowed the correct proportion.

Q. I am not asking you that. Now, listen to my questions, and I think we will get along faster. I am asking you if you personally checked each settlement that was made for each one of these 437 cars, or how many ever you claim here on this exhibit,—419? Did you personally check them?

A. I did not personally check the settlement sheet.

Q. You did not?

A. I checked the statement—

Q. That's all I want to know. You didn't personally check it, that's right, isn't it?

A. That is correct.

Q. And as a matter of fact, it is not your duty to personally check that sheet, is it?

A. No.

Q. It is not?

A. Now—

Q. Now, don't argue, just answer the question.

Mr. Smith:
We object to that.

Mr. Gibson:
Let the witness finish his answer.

Q. I am just asking you if it is not your general duty to personally check those settlement sheets?

A. It is in this respect. Whenever we have a stoppage on our line and traffic is rerouted, I get these reroute reports, and I personally check to see that we get the proper revenue for the service that we performed on those.

Q. Have you personally checked each one of these?

A. Yes, sir, I have checked the revenue, the divisions used and the revenue that we were allowed in each case, and in some instances we were not allowed sufficient revenue, and in those instances the figures I showed down here as reroute revenue are the correct figures that we should have been allowed. They are more than we hold now but they represent, the difference is represented by an amount that our auditor will endeavor to get from the other line.

Q. Did you check, does that mean that you have looked personally at the settlement sheet?

A. I have not looked personally at the settlement sheet, but the report of the settlement sheet, a copy of that which was furnished me by the auditor, I have examined, and that settlement sheet, all of them I have here.

Q. Let me see one of those if you will?

A. These are figures furnished by our Accounting Department showing each road that handled the shipment, the junction at which they delivered it to us, the division, usually stated in percentages, from

which the settlement of each road was determined, and the amount now shown in the account.

Q. Now, do you have that for each one of these cars here?

A. Yes, sir.

Q. Do you have that here with you?

A. I have this here with me on each one of these sheets on each car involved.

Q. Each one of them is listed on this exhibit over here?

A. Yes, sir.

Q. Let's just take one?

A. All right.

Q. You don't have a copy of this, do you?

A. No, sir.

Q. Just take this. This is a shipment to Tacoma, Washington.

A. From Tacoma, Washington.

Q. From Tacoma, Washington to Pascagoula, Mississippi?

A. That's right.

Q. That was routed over the L&N at some point?

A. We received it from connections at East St. Louis.

Q. You picked that up at East St. Louis?

A. That's right. We were to handle it from East St. Louis by our line, from East St. Louis direct to Pascagoula.

Q. How did you reroute it?

A. At Nashville we rerouted it, we gave it to the NC&StL, who handled it to Atlanta, Georgia. The West Point route handled it from Atlanta, Georgia to Montgomery, and then they gave it back to us.

Q. What does that sheet show as the net credit that the NC&StL is entitled to for handling that car?

A. The NC&StL received $43.48 for their service.

Q. Now, when you use the word "received", do you mean that the L&N Railroad Company paid them $43.48?

A. Yes, sir. On this particular shipment it went to a destination on our line. Our auditor made the settlement with all of the roads participating in the movement, and they gave the NC&StL $43.48.

Q. Now, how often are those settlements reached?

A. Once a month.

Q. Once a month?

A. Yes.

Q. Now, suppose that the NC&StL had gotten the L&N to handle a similar shipment, say on October 3, and that the L&N had earned $43.48 for handling that shipment over its lines. And suppose those were the only two transactions. At the end of the month how would the two roads stand?

A. They would have a credit on the traffic that they handled for us, and we would have a debit on theirs, and vice versa.

Q. If those were the only two transactions?

A. That is correct.

Q. At the end of the month the L&N would owe the NC&StL $43.48, and the NC&StL would owe the L&N a like amount?

A. Yes, sir.

Q. And the two things would offset each other?

A. That's right.

Q. That's right, isn't it?

A. That is correct.

Q. Can you tell us now in the settlement how much of this amount that you got was handled by that type of offset with these other roads? Have you got your records showing that?

A. There was no such situation; we performed no similar service for the NC&StL or other roads during this period.

Q. During that month?

A. During this period, no, sir.

Q. But in later periods you did perform similar services for them from time to time, did you not?

A. Not to my knowledge.

Q. Not to your knowledge?

A. Not to my knowledge. So far as I know we have never, the NC&StL has never had to call on us in similar circumstances for performing services for them.

Q. I mean don't you route anything over the NC&StL just from time to time in the ordinary course of business?

A. Traffic is interchanged freely between our lines, and the shippers route traffic over our line and the NC&StL every day.

Q. Every day?

A. Yes.

Q. What territory does the L&N serve?

A. The L&N serves primarily the territory south of the Ohio River, east of the Mississippi River, to the Gulf Ports.

Q. Does the main line run from Mobile on north to Louisville, through Birmingham?

A. From New Orleans to Cincinnati.

Q. From New Orleans to Cincinnati?

A. That is correct.

Q. All right.

A. And we also have a main line that runs from Cincinnati to Atlanta, and also a main line that runs from Memphis to Nashville

Q. Now, on this chart here you have the initials "WPR" as another.

A. That is the West Point route.

Q. The West Point route?

A. Yes, sir, in the last page of that you will find all of those abbreviations explainend.

Q. All of them are explained?

A. Yes, sir.

Q. I haven't had a chance to get that far along.

A. Yes, sir.

Q The West Point, WPR is the West Point route?

A. Yes, sir.

Q. Where does that run?

A. It runs from Augusta, Georgia to Selma, Alabama. Of course, they have some branch lines too, but their main line runs from Augusta, Georgia through Atlanta, from Atlanta to Montgomery, and thence to Selma, Alabama.

Q. Where does it touch the L&N lines or make connections, at Selma and anywhere else?

A. They connect with us at Montgomery, Alabama, at Selma, Alabama, and at Atlanta, Georgia.

Q. Now, the NC&StL is the Nashville, Chattanooga & St. Louis?

A. Yes, sir.

Q. Is that right?

A. That is correct.

Q. And are those the towns served by that road?

A. That road runs from Paducah, which is on the Ohio River, through Nashville to Atlanta, Georgia, through Chattanooga. Generally speaking that is their main line, although they do have a line from Memphis to Nashville, and numerous branches.

Q. The WPR. or the West Point route, and the NC&StL are wholly owned subsidiaries of the L&N Railroad?

A. No, sir.

Q. Are they not?
A. No, sir.
Q. What is the stock relationship?

Mr. Smith:
We object to that.

The Court:
I sustain the objection to that.

Mr. Pettus:
We except.

Q. Isn't the West Point and the NC&StL known as feeder lines to the L&N?
A. No, sir.
Q. Do you know that expression, "Feeder lines"?
A. I wouldn't say that they were, no, sir.
Q. You say a good deal of the traffic is routed over those roads, isn't it?
A. Yes, sir. We also route a good deal of traffic over nearly every railroad in the South.
Q. Do you have the checks or any records here in the Courtroom showing payments of any amounts by the L&N Railroad Company to any of these other roads shown on Plaintiff's Exhibit 2?

The Court:
Is this a question of payment? They would be liable, if there is a liability to pay, it would be just the same, wouldn't it?

Mr. Pettus:
I want to know if it has been paid.

The Court:

What difference would it make if they owed the other railroads for it?

Mr. Pettus:

If it has not been paid they can get credit for it.

The Court:

Credit wouldn't change the situation. They would lose, if they got credit—I mean if they put out the service.

Mr. Pettus:

The service might not be the dollars' equivalent, may it please the Court. If you owe a man ten dollars and work for him at the rate of ten dollars a day that is one thing. But they might not be charged but a dollar a day or something of that sort. When you can repay in service, that is a different thing from money.

The Court:

Well, you have to pay for services though, don't you?

Mr. Pettus:

Well, it may not be the dollar equivalent though.

The Court:

Well, I sustain the objection.

Mr. Pettus:

We except. That's all.

Mr. Smith:
That's all. Come down. You are through. Can we excuse this witness?

The Court:
Yes.

Mr. Smith:
I understand I formerly offered the exhibit and it was received.

The Court:
I am not sure whethere you did or not.

Mr. Pettus:
We renew our objection to it.

The Court:
It has been offered.

Mr. Smith:
It was offered, objections made to it, and the Court overruled the objection.

The Court:
I overrule the objection.

Mr. Pettus:
We except.

Mr. Smith:
Do you have any objection to excusing this witness?

Mr. Pettus:
We have no objection.

The Court:
Unless there is objection you will be excused.

(Witness excused.)

Mr. Smith:
Mr. Thompson.

WILLARD H. THOMPSON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Smith:
Q. State your name, please, sir.
A. Willard H. Thompson.
Q. Willard?
A. Willard H. Thompson.
Q Mr. Thompson, where do you live?
A. I live in Birmingham.
Q. Are you employed?
A. I am employed by the Louisville & Nashville Railroad Company.
Q. What is your job?
A. Assistant Trainmaster.
Q. Here in Birmingham?
A. Here in Birmingham.
Q. Do you recall the occasion in 1955, October, of 1955, when there was a strike at the Boyles Yard here?
A. I do.
Q. Were you in Birmingham during the period of that strike?

A. I was.

Q. Now, at the present time you are assigned in Birmingham as Assistant Trainmaster, you say?

A. Yes, sir, that's right.

Q. Would you tell us whether you have within your duties in that position contacts with the agencies in the Birmingham area, the Railroad Agency Offices?

A. Yes, I have general supervision over the agencies in my assigned territory, which is between Decatur and Montgomery, and the Alabama and Birmingham Mineral Subdivisions.

Q. All right now, let's be sure we have got that area in mind. That is the L&N's various installations south of Decatur and north of Montgomery, including that Alabama Mineral Line, which is a branch line?

A. That is correct.

Q. In which direction generally does that run?

A. The Alabama Mineral runs east.

Q. A loop?

A. A loop that runs to Gadsden, Anniston, Talladega and Sylacauga.

Q. And comes back into the main line where?

A. Calera.

Q. At Calera?

A. Yes, sir.

Q. Do you have another branch line in the area that you covered?

A. Yes, north of Birmingham, the Birmingham Mineral, which runs west from the main line. It operates to Bessemer, Ensley, Thomas, and down to Tuscaloosa.

Q. The Alabama Mineral is one of the branch lines, and the Birmingham Mineral the other?

A. That is correct.

Q. Within the area that is under your supervision I will ask you if your duties give you general supervision over the agency records that are kept at the various agency offices?

A. It does.

Q. You don't work at any of the agencies?

A. No, I have just general supervision.

Q. Now, are you familiar with the operation of an agency office?

A. Yes, sir, I am.

Q. Have you ever worked in an agency office?

A. Yes, when I started my railroad career I was an agent in the beginning.

Q. How long have you been with the Railroad?

A. 13 years.

Q. Did you prepare a chart or tabulation preparatory to testifying in this case that contains information relating to the various agencies within that area?

A. Yes, I did.

Q. I think probably the best thing to do is for you to tell us what information you obtained from the agencies records.

Mr. Pettus:

May it please the Court, we object to this. Here is a paper in Court that we have never seen before, there is no original record. It is one he has prepared, no records apparently available here to check it by or anything else, and we object to it.

The Court:

I overrule the objection. He hasn't offered it yet. Are you going into how it was compiled?

Mr. Smith:
Yes, sir.

Mr. Pettus:
We except.

Q. Let me take one sheet of your chart here.
A. Sure.
Q. And hold that there. Now in preparing this record, Mr. Thompson, did you personally visit the agencies of the L&N Railroad within the area that you have just described to us?
A. Yes, I did.
Q. And did you obtain from those records at the various agencies certain information which you have compiled here?
A. Yes, sir, I did.
Q. Did you bring here to Court, and have here in the Courtroom, all of the records from which you obtained that information?
A. I do. It is in the rear of the Courtroom.
Q. Those records are here?
A. Yes, sir.
Q. Tell us, without giving us any figures, tell us what information you got with respect to each of the agencies.

The Court:
How many of those records are there? Let's find out.

Mr. Smith:
All right, sir.

Q. How many records are there? Tell the Court and jury if you will something about these records, what do they consist of?

A. These records consist of reports which are normally made by our agents or their forces of all inbound shipments and all shipments that are forwarded.

These records are prepared daily, and in the case of the shipments forwarded, it is on the monthly report. And the information that I have secured from them was taken from three different classes of reports.

There was the daily abstract report, which is a summary of every waybill, covering each shipment that comes into the station. Now this summary shows the weight and the revenue involved.

The monthly report, which I spoke of, is what we call the freight forwarding report, which lists each shipment separately, showing the amount of weight and revenue for each shipment. Now it is made as a monthly report, but kept up currently.

Now those are the reports which I have here to the rear of the Courtroom.

Q. Now how many of them, do you have any judgment as to how many pages of papers all of those reports and documents consist of?

A. They are quite voluminous. It would be rather hard to estimate it. In some cases they were larger agencies, and there are as many as several thousand. In case of the smaller agencies, of course, it would be confined to possibly a hundred and fifty to two hundred.

Q. Would the documents that you obtained that information from number into the thousands?

A. Yes.

Q. And do you have all of them here?
A. I do.

Mr. Pettus:
May it please the Court, we want to interpose an objection here to the fact that he has only taken a segment of one Company, certain agencies in it, he hasn't made the same audit throughout the entire scope of the L&N operations.

The Court:
Well, he hasn't developed that at this phase of the case to that extent yet. I overrule the objection.

Mr. Pettus:
We except.

Q. What have you shown, taking you back to where we were, what have you shown with respect to each of these agencies in this Birmingham area, in the way of the general information? I don't want you to tell us any figures at this time, but just tell us what the information consists of.
A. The information that I have on this report is broken down on a daily basis, showing the total tonnage in pounds, and the dollars and cents amount of revenue, of both inbound and outbound shipments at each station.
Q. I see. You have reported inbound and outbound cumulatively?
A. That is correct.
Q. Put them together?
A. I put them together.
Q. What period does this cover, for the year 1955?

A. This period covers the nine days preceding the work stoppage, and nine days following, as well as the three days in which the work stoppage was in effect.

Q. This covers a twenty-one day period that included the work stoppage?

A. That is correct.

Q. And for each agency you have shown the amount of tonnage in pounds and the dollar volume of revenue nine days in advance of the strike, during the strike, and nine days after the strike, is that correct?

A. That is correct.

Q. Now I notice that you have several sheets of paper here. Now just so we will all understand what this is, have you broken that down by subdivisions of this part of the Railroad?

A. Yes, I have broken it down into separate areas.

Q. All right, tell the jury what they are.

A. The area which you have in your hand here covers the Alabama Mineral Subdivision which we discussed, that runs east through Gadsden, Anniston, Sylacauga to Talladega. That covers all of the shipments in that area.

Q. All right, sir.

A. On the next sheet I prepared a summary of all the agencies of the Birmingham Mineral. That is the one that we said runs through Ensley, Woodward, Bessemer, and Tuscaloosa.

Q. All right, sir.

A. On this next sheet I have the summary covering the area from Birmingham to Montgomery. That includes Birmingham and stops at Elmore.

Q. All right.

A. The next sheet I have covers the summary of the area from Decatur to Birmingham, but not including Birmingham.

Q. All right.

A. Now I have four sheets on which I compiled these figures. Then I made a recapitulation sheet which is broken down into these four subdivisions which I just stated. I have them listed in the horizontal and perpendicular manner here. Then at the side, over to the right, I have the grand total of the tonnage and revenue by days for this area in which this was compiled.

Q. All right. Now, Mr. Thompson, did you personally make the totals and tabulations that are shown on that sheet?

A. Yes, sir.

Q. On those sheets?

A. Yes.

Q. You went to the various agencies personally and examined these records, is that correct?

A. That is correct.

Q. And you have brought up here today the records that you worked from?

A. Yes, sir.

Q. And collected from the agencies all over the System, or the affected part of the System?

A. Yes, sir.

Mr. Pettus:

We object to that, as to the "affected part of the System", may it please the Court.

The Court:

Overruled.

Mr. Pettus:
We except.

Q. Is that right?
A. That is correct.
Q. Now the records that you have told us about that you worked from at these various agencies, are they records that are kept by the Railroad in the regular course of its business?
A. They are.
Q. It is part of the regular business of the Railroad to keep those records?
A. That is correct.
Q. And you have brought them here, and they are in the Courtroom?
A. That is correct.

Mr. Pettus:
We would like to question him on voir dire there, may it please the Court.

The Court:
All right.

Mr. Pettus:
You don't keep those records yourself, do you?

The Witness:
I do not.

Mr. Pettus:
They are not kept under your supervision or control?

The Witness:
They are under my general supervision.

Mr. Pettus:
They are under your general supervision?

The Witness:
That is correct.

Mr. Pettus:
Each one of the records that you examined?

The Witness:
That is correct.

Mr. Pettus:
How often do you make a check of them?

The Witness:
I would say approximately once or twice each month. I generally try to get there, it just so happens, whenever my work carries me to this particular station I make a spot check of these various records and reports.

Mr. Pettus:
Are you in the Auditing Department?

The Witness:
No, I am not.

Mr. Pettus:
You are not in the Auditing Department?

The Witness:
No.

Mr. Pettus:
That's all.

The Court:
All right, go ahead.

Mr. Smith:
We at this time offer the tabulation.

The Court:
What does that tabulation show with respect to the damage, if any?

Mr. Smith:
This is sort of a—it will have to be connected up, but this tabulation will show the dollars of revenue day by day for the nine days prior to the strike, during the strike, and nine days after the strike. That is gross revenue. This witness I will state to the Court, of course, is not to testify as to the profits that would have been earned on that, it is impossible.

The Court:
Subject to being connected up, I will permit it to come into evidence.

Mr. Smith:
We expect to connect it up. And we offer at this time each of the sheets.

The Court:
All right.

Mr. Smith:
I believe, being separate, it might be better to mark them separate exhibits.

Mr. Pettus:
We want to interpose an objection to these documents that are offered in evidence on the ground that the original records, while they are said to be available here in the Courtroom, have not been shown to be available, not shown to be any connection between these summary sheets and the records. It is not shown to be kept in the regular course of business. And on the further ground that it is incompetent, irrelevant and immaterial, and it is not shown to be any item of recoverable damage in the case.

The Court:
You want to ask another question before I rule on the objection?

Mr. Smith:
Yes, sir.

The Court:
All right.

Q. Now, Mr. Thompson, I will ask you if you have also shown on this tabulation the same information for the comparable period of three weeks in the month of October in 1954?
A. Yes, I did.

Mr. Smith:
All right, sir.

The Court:
I overrule the objection.

Mr. Pettus:
We object on the further ground it calls for a comparison. We except.

Mr. Taylor:
We except.

(Plaintiff's Exhibits Nos. 3 to 7, inclusive, were marked for identification.)

Q. Now, Mr. Thompson, you were here in Birmingham personally during the strike you told me?
A. Yes, sir, that's right.
Q. And I believe prior to that time you had been assigned duties at another city and were sent here for that period, is that right?
A. That is correct.
Q. All right. Now, I will ask you if you know of any other event or occurrence during that three day period, other than the stoppage, that would have adversely affected the revenues of the L&N Railroad in the area that you have told us about?

Mr. Pettus:
We object to that, incompetent, irrelevant and immaterial.

A. I do not know of any other.

Mr. Pettus:
Wait a minute.

The Court:
Overruled.

Mr. Pettus:
We move to exclude the answer, until we get our objection in.

The Court:
The answer was you did not know?

The Witness:
The answer was I did not know of any other reason.

Mr. Pettus:
I move to exclude the answer.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Do you know of any bridges that were out in the area that is covered by your report here?
A. No, sir.
Q. Do you know of any track troubles that caused the Railroad to stop or shut down?
A. No, sir.
Q. All right, sir. Answer out, so the Court Reporter can hear you.
A. No, I did not know of any.
Q. Now, I will ask you if during that period, the latter part of October, is a period that is more or less consistent so far as the volume of business on the L&N is concerned?

Mr. Pettus:

We object to that. It calls for a conclusion or opinion of the witness, invades the province of the jury, incompetent, irrelevant, and immaterial.

The Court:

You mean from year to year?

Mr. Smith:

No, sir, I mean from week to week, any reason for any variation, or is it consistent, or is there any occasion for it to vary up and down from week to week.

The Court:

I overrule the objection.

Mr. Pettus:

We except.

A. It is consistent.

Mr. Pettus:

We move to exclude the answer on the same ground.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. Do you know of any seasonal factors that would affect the business from week to week in the fall of the year, in October?

Mr. Pettus:

We object to that on the ground the witness is not properly qualified, and it calls for an opinion and conclusion.

The Court:

Overruled.

Mr. Pettus:

Incompetent, irrelevant, and immaterial. We except.

A. My answer to that question is I don't know of any reason for variation.

Mr. Pettus:

I didn't hear him.

The Court:

Speak out.

A. My answer to that was that I don't know of any seasonal business that would increase it.

Mr. Pettus:

We move to exclude the answer on the same ground.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. Now, just so we will be clear here, I am looking at the recapitulation which is Plaintiff's Exhibit No. 3, and I note that the days of the 24th, 25th, and 26th, they would be the days that would reflect the freight differential?

A. That is correct.

Q. Have been outlined here in pen and ink. You did that? That was on the exhibit?

A. That was on the exhibit. I used that for my own reference in case I was called upon.

Q. All right. I wonder if you would give me the total revenue for the week. You have totaled for all of the weeks there?

A. Yes, I have them totaled by weeks.

Q. Will you give me the total revenue for the week ending on the 21st of October?

A. The total for the week of October 15, 1955 was $1,072,113.57.

Q. That is the 15th to the 21st?

A. 15th to the 21st.

Q. All right. One million—

A. $1,072,113.57.

Q. Give me the total for the next week.

A. Total for the week of October 22, 1955 was $519,000—

Q. Is that the 22nd to 28th?

A. 22nd to the 28th, that's right.

Q. All right.

A. That was $519,405.21.

Q. Give me the total for the week after that.

A. The following week, the week of October 29 to November 4, 1955 was $1,237,810.76.

Q. $810.76?

A. That's correct.

Q. All right, now.

Mr. Byrd:

Your Honor, we object to these figures.

Q. The figure for the week before was $1,072,113.57?

A. Yes, sir.

Q. For the week that this three day period was in, and that includes I assume four other days, is that right?

A. That's right.

Q. It was $519,405.21?

A. Yes, sir.

Q. The week after $1,237,810.76, is that correct?

A. That is correct.

Q. Have you made any computation—well, that's all right. Those are the figures, however, that represents the total revenue in dollars from the area that you described to us earlier for nine days prior to the work stoppage and nine days afterwards?

A. Yes, sir.

Q. Your totals are by weeks, I believe?

A. That's right, by seven day periods.

Q. Now, you told us about the four sections,—may I call them sections, or subdivisions that you have treated separately there, and you as I understand it have shown the agencies on each one of them?

A. That's right.

Q. Did any trains operate on any of those subdivions from the 23rd to the 26th of October?

A. Yes, there were several trains operated on outlying points.

Q. On what subdivisions?

A. Well, I can better describe the trains themselves.

Q. Just tell me about the trains themselves?

A. All right. We operated on Monday, to the best of my recollection.

Q. All right.

A. We operated No. 22, which is a northbound local on the Division between Montgomery and Birmingham. We operated it from Montgomery to Calera and turned this crew back to Montgomery, and tied the crew up.

Q. All right.

A. On the Alabama Mineral subdivision we operated Train No. 92, which is the local freight train between Anniston and Gadsden, and turned this crew back to Anniston.

And we operated No. 53 and 54, which are two locals on the south end of the Alabama Division between Anniston and Columbiana. Both of those trains operated on Monday.

Now, to the best of my memory the operation out of Montgomery was confined to one day. In other words, No. 22 was operated to Calera and turned back on Monday only. We didn't operate any more crews on that subdivision on Tuesday and Wednesday.

On Tuesday and Wednesday we did operate 53 and 54 between shops and Columbiana, which is Anniston shops to Columbiana.

And to the best of my memory we did operate No. 91, 92 in turnaround service, as I told you between Anniston and Gadsden.

Those were the only trains which we operated in this area.

Q. Except for No. 22 out of Montgomery were all of those trains on the Alabama Mineral Division?

A. That is correct.

Q. Do you have a separate sheet there for the Alabama Mineral?

A. Yes, I do.

Q. So that the Alabama Mineral Division will show for this period some freight handled, by tonnage and by dollars, for the days in question?

A. That is correct.

Q. That has been brought forward into this recapitulation?

A. That is correct.

Q. Was there anything handled on the Alabama Mineral that got off of the Alabama Mineral Division?

A. No, sir.

Q. Did it get into the main line anywhere?

A. Not to our main line at all.

Q. It was handled between local points on the Alabama Mineral?

A. That is correct.

Q. That you were able to continue to operate?

A. That is correct.

Q. None of that had to come into Boyles?

A. No, there were no trains operated into Boyles.

Q. Now except for that, the trains you have told us about on the Alabama Mineral and the No. 22 out of Montgomery, the rest of the area that you have described earlier to us was out of business during this period?

A. That is correct.

Mr. Smith:

I believe that's all.

Cross Examination.

By Mr. Pettus:

Q. Mr. Thompson, these agencies that you have been talking about, they are all on the L&N Railroad?

A. That is correct.

Q. You have not been talking about any different Railroad?

A. No.

Q. It is all part of the same System, is that right?

A. That is correct.

Q. That is the one that runs up to Cincinnati, I mean it is all one corporation, isn't it?

A. Yes, that is correct.

Q. The profits for that Railroad for 1955 were $24,600,000.00, weren't they?

A. I don't know.

Q. Are you in the Accounting Department?

A. No, I am not.

Q. You don't know what profits there were for that year?

A. I do not.

Q. Or the year before for the Railroad?

A. I do not.

Q. In these figures you have given us,—it costs something to run a Railroad, doesn't it?

A. It does.

Q. These gross revenue figures that you have given us here, you have to offset them against what it costs to run the railroad to find out where you come out, don't you?

A. That is correct.

Q. In your chart there, Mr. Thompson, every now and then you run into a blank day, like for instance there is October 15 there at the Decatur subdivision, zero, zero, and does that mean that there was no tonnage handled there?

A. What particular station was that?

Q. That is Decatur substation, on your recapitulation here.

A. Oh, yes. I might tell you that there are smaller agencies which are only five day operations. I mean by that Monday through Friday, so therefore on Saturday and Sunday there would be days in which no business was handled at all, so far as our agency is concerned.

Q. In other words, the Railroad shut them down that day, did it?

A. There is no agency on duty.

Mr. Pettus:

I think that's all.

Mr. Smith:

That's all, Mr. Thompson.

The Witness:

Thank you.

The Court:

Does this also reflect the tonnage for the period there?

Mr. Smith:

Yes, sir.

The Witness:

Yes, sir, it does. That wasn't brought out but it does reflect the tonnage.

The Court:

Do these receipts, for instance, actually reflect tonnage for those weeks or does that actually reflect receipts on tonnage perhaps for prior weeks?

The Witness:
It reflects tonnage for these weeks.

The Court:
Tonnage for those weeks?

The Witness:
Yes, sir, that is correct.

The Court:
All right.

Mr. Smith:
May he be excused?

The Court:
Yes, unless there is objection.

(Witness excused.)

Mr. Smith:
Call Mr. Carl Bratton.

CARL BRATTON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Smith:
Q. Is this Mr. Carl Bratton?
A. Yes, sir.
Q. That is B-r-a-t-t-o-n?
A. Yes, sir.

Q. Where do you live?
A. Louisville, Kentucky.
Q. By whom are you employed?
A. Louisville & Nashville Railroad Company.
Q. What is your job with them?
A. I am Assistant to the Comptroller.
Q. Assistant to the Comptroller?
A. Yes, sir.
Q. With offices, head office in Louisville?
A. Yes, sir.
Q. Are you a general officer of the Railroad?
A. I am.
Q. Is the Comptroller the head of the Accounting Department?
A. Yes, sir.
Q. Now, you have seen a copy of the report that Mr. Willard Thompson made up, I believe?
A. Yes, sir, I have.
Q. You are familiar with this?
A. Yes, sir.
Q. You didn't make it up?
A. No, sir.
Q. Or participate in making it?
A. No, sir.
Q. But you know what it purports to show
A. Yes, sir.
Q. All right. Now, in the office that you were in, that you are a member of, and general officer of, the Accounting Department, is that where the over-all, Systemwide accounting of the L&N Railroad is done?
A. Yes, sir, it is.
Q. You do not have general accounting offices scattered throughout the Railroad?
A. We do not.
Q. Now, these figures that are shown on Mr. Thompson's records here, I believe—

Mr. Pettus:
Will you tell us what page that is?

Mr. Smith:
That is on the recapitulation for the week ending the 21st of October, 1955, $1,072,000—excuse me. that's so much money I can't say the figures. That is one million—

The Witness:
Seventy-two thousand.

Mr. Smith:
Seventy-two thousand one hundred thirteen dollars and fifty-seven cents. We have written that figure on the board.
And the following week, $510,405.21. The next week $1,237,810.76.

Q. Now, can you as an accountant and general officer in the Accounting Department of the Railroad determine from that information how much of that revenue would have been retained by the L&N Railroad?
A. Yes, sir, I can.

Mr. Pettus:
We object to that.

Q. All right, sir.

Mr. Pettus:
Incompetent, irrelevant, and immaterial, the witness not properly qualified.

The Court:
Are part of your duties to figure the cost and profit of the Railroad?

The Witness:
Yes, sir, it is.

Mr. Pettus:
It is not shown to be uniform throughout the System.

The Court:
What was your question? I don't exactly remember the question.

Mr. Smith:
I asked him if he was able to determine from the figures shown here how much—I think probably I am—I will withdraw the question. I think probably I was premature.

Q. Now, Mr. Bratton, let me ask you this question, assuming that, looking at those figures there, and assuming that those figures are correct, and that there was no event or occurrence or condition on the Railroad that affected the business of the Railroad in the Birmingham area during the period of this work stoppage from October 23rd to 26th, of 1955, and assuming that the business of the Railroad is more or less constant and consistent throughout the month of October, can you from that form any opinion as to the amount of over-all gross revenue that the Railroad lost as a direct result of this work stoppage?

Mr. Pettus:
We object to that, incompetent, irrelevant, and immaterial, the witness is not properly qualified.

The Court:
Did you finish your objection?

Mr. Pettus:
What is that?

The Court:
Have you finished your objection?

Mr. Pettus:
No, sir, hypothesized on facts not in evidence, it is not shown that there is a uniform rate of profit throughout the System, it is not shown what expenses were incurred in this area, it does not exclude other factors involved in this case from having taken place, and no casual connection shown between the issue in this case and the answer called for by the question.

Mr. Smith:
I have not asked him about profits yet. I just asked him if he can, assuming these facts I have hypothesized—

The Court:
I overrule the objection.

Mr. Pettus:
We except.

Q. Can you, sir?
A. Yes, sir.

Q. Do you remember the question?
A. Yes, sir.

Mr. Pettus:
We move to exclude his answer on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

A. On the October 19—

Mr. Pettus:
Is this another question, or is he just going ahead with this?

The Witness:
I am answering the question that he asked.

The Court:
Now, he is answering the question. I think you will have to ask another question.

Mr. Smith:
All right.

Q. In your judgment then what amount of gross revenues, or what loss of gross revenues would you as an accounting officer of the Railroad say the Railroad suffered due to this work stoppage?

Mr. Pettus:
We object on the same ground.

The Court:
I overrule the objection.

Mr. Pettus:
We except.

The Court:
Of course, the loss of gross revenue is not—

Mr. Smith:
Is not the measure of damages.

The Court: —
Yes. I assume this is leading up to an attempt to establish loss of profits.

Mr. Smith:
That is certainly right.

The Court:
Overruled.

Mr. Pettus:
We except.

A. Between the week of October 15-21, and the week of October 22-28, that is the difference between the two weeks we would have lost gross revenue amounting to $366,413.00.
Q. You mean the revenues that—

Mr. Pettus:
We move to exclude the answer on the same ground.

Q. Give me that figure.
A. $366,413.17.

Mr. Pettus:
We move to exclude that answer on the same ground.

The Court:
Gross—I don't know how that is arrived at.

Mr. Smith:
I will clarify that.

The Court:
It is a preliminary matter. I overrule the objection for the time being.

Mr. Pettus:
We except.

Q. That figure there I notice is substantially smaller than between these two weeks here. I will ask you if in making this, giving me this figure, that you have just given of $366,413.17, if you have taken out any revenue that would not have been retained by the L&N Railroad?
A. I have.
Q. That is interline?
A. I have taken out the revenue that would be applicable or would be incurred to other roads.
Q. So that this would be the amount of revenue that the L&N lost in your judgment because of the work stoppage that would have been retained by the L&N?

Mr. Pettus:
We object to that.

A. That's right.

Mr. Pettus:
Incompetent, irrelevant, and immaterial, the witness not properly qualified, hypothesizes facts not in evidence.

The Court:
I think the question is did they lose that amount of gross revenue.

Mr. Smith:
Yes, sir.

The Court:
And not whether they would have.

Mr. Smith:
I think Your Honor is entirely right.

Q. Is that the amount that the Railroad lost in gross revenues during that period?
A. Yes, sir.

Mr. Pettus:
We object to that.

Q. On account of the work stoppage?

Mr. Pettus:
We object. The witness answered a little too quickly. I want to get in an objection. It is incompetent,

irrelevant, and immaterial, the witness is not properly qualified, not shown any data or any evidence or any papers or anything else upon which the witness bases his opinion.

The Court:
I overrule the objection.

Mr. Pettus:
We except. We move to exclude the answer on the same ground.

The Court:
Overruled.

Q. Now, Mr. Bratton, that figure that I have written up there, $366,413.17, that is not profit, is it?

A. No, sir.

Q. Now, does the Railroad in its Accounting Office which you are one of the general officers of regularly keep records as a part of which is the reporting of cost figures and revenue figures and the development of profit figures?

A. We do.

Q. Do you have with you any kind of accounting report?

A. Yes, sir, I have a copy of our annual report to the Interstate Commerce Commission.

Q. Who prepares that report?

A. That is prepared by the comptroller's office, of which I am a member.

Q. Then the L&N Railroad prepares that?

A. Yes, sir.

Q. And makes the report to the Interstate Commerce Commission?

A. That is correct.

Q. Is that report, after it has been prepared and filed, does it continue to be a record of the L&N Railroad?

A. Yes, sir.

Q. And is it used in the day to day operations of the Railroad?

A. Very much so.

Q. Is the making of that report a part of your regular business with the Railroad?

A. Yes, sir.

Q. It is made in the regular course of business of the Railroad?

A. Yes, sir.

Q. You have there the annual report made to the Interstate Commerce Commission for the year of 1955?

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. All right, sir. Can you refer to that report, Mr. Bratton, and tell us what portion of every dollar of operating revenues in the year 1955 the L&N Railroad retained after paying all operating expenses, that is the profits on operations?

Mr. Pettus:

Now, we object to that as incompetent, irrelevant, and immaterial. The primary data is not in Court. It is not shown that this situation in Alabama was the same as it is in Ohio or Kentucky or anywhere else, and that it is incompetent, irrelevant, and immaterial.

The Court:

Overruled.

Mr. Pettus:
We except.

Q. Go ahead.
A. Yes, sir.
Q. Do you remember the question?
A. I do, yes.

Mr. Pettus:
We move to exclude the answer on the same ground.

Q. Have you reduced that to a percentage?
A. Yes, sir, I have.
Q. Now, what is that percentage?

Mr. Pettus:
We object to that on the same ground, that there is no evidence in Court upon which the witness can base that opinion.

The Court:
Well, I think this, probably, he has raised a point of objection here. Was the revenue on this involved section the average revenue or was it less than the average revenue?

Mr. Smith:
We say to the Court that, of course, that would be something to be inquired about, and might go to the credibility of it, but I say this—let me ask the witness this question.

Q. Mr. Bratton, how long have you been with the Railroad?
A 39 years.

Q. How long in the Accounting Department?

A. 39 years.

Q. 39 years in that department?

A. Yes, sir.

Q. How long have you been familiar with all the operations of the Railroad, its various Divisions and Subdivisions?

A. For that period of time.

Q. Throughout the years, I take it?

A. Yes, sir.

Q. And with the revenues and the operating expenses?

A. Yes, sir.

Q. As to the individual parts of the Railroad?

A. Yes, sir, that is true.

Q. Is there any occasion that you know of, or any reason that you know of why this figure that you have told us, that you have for the over-all operations and profits of the Railroad as related to each dollar of revenue would not be a reliable figure as applied to the area affected by this work stoppage?

Mr. Pettus:

We object to that. It is calling for an opinion or conclusion of the witness.

The Court:

I sustain the objection to the form of the question.

Q. Now, Mr. Bratton, let me ask you if in your opinion, in the light of your knowledge of the Railroad business and its accounting methods and procedure that the figure that you say, you tell us for the System as a whole, if it would be applicable to this part of the System in the Birmingham area?

A. I see no reason why it would not.

Mr. Pettus:
We object to that.

The Court:
I think it is a question of whether or not it is, or in his judgment it is, rather than seeing no reason why.

Mr. Smith:
Yes, sir. I think that is correct.

The Court:
I sustain the objection to that.

Mr. Pettus:
May I get in an objection to that, on the same ground that we objected to the other question?

The Court:
Yes.

Mr. Pettus:
We except.

The Court:
I granted the motion as to that particular answer.

Mr. Pettus:
Oh, I didn't understand Your Honor.

The Court:
I told him to rephrase his question.

Mr. Smith:
I haven't got the figure, but I am, I am going to ask about this figure that if you haven't told us, tell us now, Mr. Bratton.

Q. Is this figure a figure that would be an accurate and reliable figure as applied to the Birmingham area?

Mr. Pettus:
We object to that.

A. In my opinion it was.

Mr. Pettus:
Mr. Bratton, if you will just wait until I can get in an objection.

Mr. Smith:
Give Mr. Pettus an opportunity to object.

The Court:
It is a leading question, the way it was asked, Mr. Smith.

Mr. Pettus:
I want to object to that.

The Court:
He has asked a leading question. I sustain the objection to the leading question.

Mr. Smith:
All right.

Q. Mr. Bratton, you told us that you have, or that in your report there you can determine what portion of every dollar of operating revenue is retained by the Railroad after paying all operating expenses?

A. That is correct.

Q. Do I understand it correctly?

A. That is correct.

Q. That is for the System as a whole?

A. Yes, sir.

Q. Would that be accurate as applied to the area of the Railroad between Decatur and Montgomery, Alabama?

Mr. Pettus:

We want to object to that on the ground that the witness is not properly qualified, he has not made any investigation, and that there is no data or any original records brought in to support any opinion of that sort.

The Court:

Of your own knowledge do you know that Mr. Bratton?

The Witness:

In my judgment I could see no difference.

The Court:

Do you keep separate accounting so far as profits are concerned with respect to each Division of the road?

The Witness:

No, sir, we do not.

The Court:
Does the Interstate Commerce Act require you to do that?

The Witness:
No, sir, it does not.

Mr. Pettus:
Your Honor, it is just a uniform accounting system as to the whole road. I don't see how any witness is capable of making or giving an answer on this line of questions.

The Court:
Well, we don't know whether or not a certain Division was losing money. If they did, I'm sure it would be taking some steps to alter the situation.

Mr. Pettus:
May it please the Court, I mean the topography between here and Ohio is so different, and the population, there are so many factors involved that unless there has been some separate data compiled by the Company, there is just no way that any one individual can have that knowledge. In other words, it has got to be a separate investigation, which so far has not come out from this witness.

The Court:
I don't believe there is anything before the Court right at this time. Go ahead with the interrogation and I will rule on the matter.

Mr. Smith:
I believe the witness said that there would be no difference, that it would apply to this area.

The Court:

I don't know if that was the last question that he answered or not. The way he answered the question I excluded it. You had better ask him the question again to be sure.

Mr. Smith:

All right, sir.

Q. In your judgment would the Systemwide profit factor, or does the Systemwide profit factor apply accurately to the Birminiham area?

Mr. Pettus:

We object to that on the vround that the witness has no information upon which to base an answer, and it is affirmatively shown that the Company keeps no records showing any comparison between areas.

The Court:

That goes to the weight of the evidence I think probably.

Mr. Pettus:

We except.

The Court:

I overrule the objection.

Mr. Pettus:

We except.

A. In my judgment there would be no difference between the Birmingham Division and other parts of the System.

Mr. Pettus:
We move to exclude the answer on the same ground.

The Court:
I overrule the objection.

Mr. Pettus:
We except.

Q. Now, would you tell us what the proportion, in percentage, is?

Mr. Pettus:
We object to that on the same ground.

The Court:
Let him finish. I don't believe he has, yet.

Q. What percentage of every dollar of revenue that is taken in is retained by the Railroad, or was in 1955, after payment of all operating expenses, Mr. Bratton?

Mr. Pettus:
We object to that on the same ground as last assigned.

The Court:
Overruled.

Mr. Pettus:
We except.

A. 21.98 per cent

Mr. Pettus:
I move to exclude the answer on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Mr. Bratton, do I understand that after paying, that out of the gross revenue you pay all expenses of operation, and the Railroad retained, after that, 21.98 per cent?

A. That's right.

Q. Now, that's not the ratio of profit to investment?

A. No, sir. Our ratio—

Q. That is considerably less, I suppose.

A. Our rate of return on investment has averaged only 4.81 per cent for the past 10 years.

Q. We won't be confused about that. This is 21.98 per cent?

A. That's right.

Q. Of the $366,413.17 that would be retained by the railroad after payment of its operating expenses?

A. That is correct.

Q. Would you be good enough to give me a total, I don't know whether you have been able to figure that out, I doubt if you have—will the Court permit the witness to compute that for convenience?

The Court:
Well, for the convenience of the jury, yes.

The Witness:

I have it here, I have computed that.

Q. What is it?

A. $80,537.62.

Q. 62 cents?

A. Yes, sir.

Q. That is all that would be, or that is in your judgment the amount of profit the L&N Railroad lost on account of the business that it did not handle on account of this strike?

A. That is correct.

Mr. Smith:

I believe that's all.

The Court:

Let me ask you this. I don't understand how you got the $366,413.17. Is that an average, did you take the average between the week preceding and the week after, and then deducting the 519 from the average? Or how did you arrive at that?

The Witness:

Well, I established a percentage of the total revenue retained by the L&N, and the portion that goes to foreign roads on interline traffic. That percentage is 66.29 retained by the L&N and 33.71 per cent goes to foreign roads.

The Court:

You had to take some over-all figure though to make your computation, didn't you?

The Witness:

Yes, I did. I multiplied the $1,072,113.67—no, I beg your pardon, strike that will you, please. I first took the difference between $1,072,113.57 and $519,405.21, leaving $552,708,000.00.

The Court:

You don't mean million, you mean thousand, don't you? You said $552,000,000.00.

The Witness:

Oh, did I? I beg your pardon. $552,708.36. Then I applied against that $552,708.36 the percentage of 66.29, which gave me $366,413.17.

The Court:

In other words, you took the less of the two figures there, you took the week before instead of the week after?

The Witness:

That is correct.

The Court:

And then you based your total revenue on that week, is that correct, the week previous?

The Witness:

The week previous, yes, sir.

The Court:

Then you took out the revenue that you would have paid the other roads?

The Witness:
Yes, sir.

The Court:
Then you took away the revenue that you actually had, is that right?

The Witness:
That is correct.

The Court:
And the difference is $366,413.17?

The Witness:
Except that I first took out of the revenue which we actually had $519,000.00 that the other roads, of course, would get.

The Court:
Of, yes. You took out the other roads' proportion, their proportionate part of $519,000.00?

The Witness:
Yes, sir.

The Court:
I see.

Mr. Smith:
All right, sir, let me put that total up there on the top.

By Mr. Smith:

Q. Now I believe you say that the figure you gave us was 21.98 per cent, which was the figure for the year 1955?

A. Yes, sir, that is correct.

Mr. Smith:

I believe that's all. These gentlemen may want to ask you some questions.

Cross Examination.

By Mr. Pettus:

Q. Mr. Bratton, you say you have no records where you keep the operating revenues and expenses of the L&N differently by states?

A. We keep the operating revenues and expenses, but we do not carry that down to net railway operating income.

Q. You don't carry that down to operating income?

A. No, sir.

Q. What do you mean that you keep it separately in general, just explain that?

A. We keep it separately for reporting to the various State Railroad Commissions.

Q. To State Railroad Commissions?

A. Yes, sir.

Q. Is that done on the gross receipts and gross disbursement basis?

A. The revenues, all intrastate revenues are assigned to states. All interstate revenues are assigned to states on the basis of mileage over which they travel.

Q. In those records that you keep for Alabama, do you show separately the interstate and the intrastate revenues?

A. Yes, sir.

Q. But you show all of it? Take the interstate revenues on a shipment originating in Cincinnati, how do you show that in Alabama?

A. On a mileage basis.

Q. On a mileage basis?

A. Yes, sir.

Q. How much trackage is there in Alabama?

A. I beg your pardon?

Q. How many miles of track are there in Alabama?

A. Of main tracks there are 1,156-1/2 miles.

Q. What is the track maintenance expense for Alabama?

A. Strike that answer, please, sir—yes, that is correct, the mileage operated, the main track mileage operated in Alabama is 1,156-1/2.

Q. By main track, what do you mean by that?

A. All tracks of the main line and branch lines that are classified as first main track, in other words. It is analogous to miles of the road.

Q. What was the mileage maintenance in Alabama?

A. I don't have the figures.

Q. You don't have the figures there?

A. No, sir.

Q. Is that in the paper that you have got there?

A. No, sir.

Q. What was the mileage maintenance in Tennessee?

A. I don't have that.

Q. How many miles are there in Tennessee?

A. 892.85.

Q. What is your gross pay roll for Tennessee?

A. I don't have that figure.

Q. What is your gross pay roll for Alabama?

A. I don't have that figure.

Q. In other words, you don't have those?

A. No, sir.

Q. You don't have the operating expenses broken down by states, is that right?

A. No, sir, I don't.

Q. You don't have that?

A. No, sir.

Q. And you don't have either any operating expenses or operating revenues broken down for this exhibit that was prepared by Mr. Thompson, do you?

A. No, sir.

Q. For those substations there?

A. No, sir.

Q. Do you know what state taxes you paid in Tennessee?

A. We paid $1,948,985.00 in 1955.

Q. That is shown though for taxes, but you don't have the other expenses, the other state-by-state expenses, is that correct?

A. That is correct.

The Court:

Is that Tennessee or Alabama?

The Witness:

That was for Tennessee.

The Court:

Oh, Tennessee?

The Witness:
Yes, sir.

Q. How much taxes did you pay in Alabama?
A. $1,743,100.00.
Q. How much in Tennessee?
A. $1,948,985.00.
Q. In other words, you paid a million nine-hundred thousand in Tennessee and a million seven hundred thousand in Alabama, is that right?
A. That is correct.
Q. You had less trackage in Tennessee?
A. Yes.
Q. Than in Alabama, is that correct?
A. We have more main tracks. I don't know about the total trackage.
Q. Now, the trackage that runs up in Tennessee, does that run through hilly country?
A. I am not familiar with the terrain.
Q. You are not familiar with that?
A. No.
Q. How about the trackage in Alabama, is that through hilly country?
A. Not so far as I know.
Q. Are you familiar with it?
A. Not too familiar.
Q. You are not familiar with that?
A. No.
Q. Well, the cost of maintaining trackage in hilly country is different from what it is in flat valley country, isn't it?
A. It is out of my line, I can't answer that question.
Q That would affect the profit, wouldn't it, if you had an expenseive track to maintain?
A. I assume that it would.

Q. You think it would?

A. Yes.

Q. And do you know what the gross tonnage that you hauled in Alabama was for the year 1955?

A. No, sir, I do not.

Q. Do you know what the gross tonnage is for Tennessee?

A. No, sir.

Q. Or Kentucky?

A. No, sir.

Q. Are you familiar with the trackage in Kentucky?

A. Partially.

Q. And are you familiar with the terminals in Kentucky that you have there?

A. Some of them.

Q. Terminal facilities; are they identical with the terminal facilities you have in Tennessee?

A. I would say they are.

Q. You say they are absolutely identical?

A. Oh, no, I can't say they are absolutely identical. That is more of an operating department question than it is an accounting question. I couldn't answer that specifically.

Q. Have you got the maintenance cost of terminals in Kentucky?

A. Do we have maintenance costs?

Q. Do you have that in your paper that you have there?

A. No, sir, I don't.

Q. Do you have the maintenance costs in Alabama?

A. No, sir.

Q. Then, Mr. Bratton, you don't know whether the operating costs are the same in Alabama or Kentucky or not, do you?

A. Not 100 per cent, no, I don't know that.

Q. Well, you don't know within quite a wide percentage, do you?

A. No, I don't.

Q. And you keep the records for the Company on a Systemwide basis, don't you?

A. Partially so; and partially on a state basis.

Q. You say partially so, and partially on a state basis?

A. Yes, that's right.

Q. When you say partially on a state basis, I have asked you if you had certain important operating expenses, and you told me you didn't have them. What do you mean, you don't have them?

A. I mean I don't have them with me.

Q. You don't have them with you?

A. Yes.

Q. And they are not in Court?

A. I do have them by states. I thought I made that clear.

Q. Now, as I understand it, Mr. Bratton, in these reports you file with the states, that is just a summary report, is that right?

A. That is a summary report of the revenues and the expenses. But as I said before it does not carry it to a point where I could determine the net profits or earnings out of each dollar of gross revenue.

Q. You couldn't do it even on those records if you had them, is that correct?

A. No, sir, I could not.

Q. You couldn't get any accurate figure on it?

A. That's true.

Q. Now the net profit of the L&N Railroad for 1955 was $24,600,000.00, wasn't it? Is that what your report shows?

A. That is net income after all fixed charges and other deductions.

Is that after taxes or before taxes?

The Witness:

That is after taxes?

The Court:

That is after taxes?

The Witness:

Yes, sir.

Q. What is that figure now?

A. The net income is $24,637,846.00.

Q. That is after all taxes, and that is for the System as a whole?

A. Yes, sir.

Q. Now that compares with the same figure for the preceding year of $18,900,000.00, doesn't it, for 1954?

A. Yes, sir, it does.

Q. Does any computation that you have made reflect, on the System as a whole, the effect of any claimed loss on account of this three day walkout in your 1955 figures for the Company?

A. No, sir.

Mr. Smith:

What is that, claimed loss?

Mr Pettus:
Claimed, claim-ed. May it please the Court, we move to exclude this witness' testimony on the basis of this examination, that he hasn't got data to sustain any of the opinions that he has expressed.

The Court:
I overrule the objection.

Mr. Pettus:
We except.

The Court:
Or I overrule your motion, rather.

Mr. Pettus:
That's all we have.

Mr. Smith:
That's all, Mr. Bratton.

The Witness:
Thank you.

(Witness excused.)

The Court:
Gentlemen, we are going to take a twenty minute recess.

(A short recess was had.)

The Court:
Call your next witness.

Mr. Smith:
I wonder if we could excuse Mr. Bratton and Mr. Thompson who have testified.

The Court:
Yes, they may be excused unless there is objection.

Mr. Pettus:
We excuse them.

Mr. Smith:
Mr. Major.

E. H. MAJOR, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Smith:
Q. State your name, please, sir.
A. E. H. Major.
Q. Where do you live?
A. Louisville, Kentucky.
Q. Is it Louisville, Kentucky?
A. Yes, sir.
Q. You are in the head office of the L&N up there?
A. Yes, sir.
Q. What is your job with the L&N?
A. I principally maintain records of all cars on or moving over the Louisville & Nashville Railroad, and of L&N's cars that are not on our Railroad.
Q. What is your title?
A. Superintendent of Car Service.
Q. Superintendent of Car Service?

A. Yes, sir.

Q. How long have you been with the Railroad?

A. Too long; 49 years.

Q. How long have you been Superintendent of Car Service?

A. 20 years.

Q. How long have you been working in that general field of railroad work, that is relating to cars?

A. Well, you might say all of my experience has been with transportation that is connected with cars, agency, yards.

Q. Yes, sir. You have had agency experience?

A. Yes, sir.

Q. And yard experience?

A. Yes, sir.

Q. All right, sir. Are you familiar with the strike in Birmingham in 1955 in October?

A. Well, I know they had one.

Q. Yes, sir. You recall the occasion I am talking about?

A. Yes, sir.

Q. Now, I will ask you to tell us if the Railroad had, at the time of the stoppage here, principally at Boyles, if the Railroad had a number of cars belonging to other railroads on the L&N line?

A. Yes, sir.

Q. Now is the L&N Railroad required to pay other lines a per diem charge for those cars?

A. Yes, sir.

Q. What is that charge?

A. $2.40 per car day.

Q. Per car day?

A. Yes, sir.

Q. Now, of course, one car might be tied up one day, and one might be tied up two or three days, but whatever it is, it is per car day?

A. Yes, sir.

Q. $2.40, is that right, sir?

A. That is correct, on railroad owned cars.

Q. Do you have in Louisville in your office a record at all times of all cars on the Railroad?

A. Why, yes, that is after sufficient time has elapsed for the reports to reach me.

Q. At any one moment you don't have any record at your finger tips that would determine what cars are on the road, is that right?

A. Not at that exact moment, no, sir.

Q. Now, have you made a study or investigation here to determine how many car days these cars were tied up as a result of this strike here in Birmingham in October, of 1955?

Mr. Pettus:

We object to that on the ground that that is no separate item of recoverable damages, and would be included in the profits, if any.

Mr. Smith:

I don't think counsel understands. It is in the pretrial order as a separate item.

The Court.

It is in the pretrial order.

Mr. Pettus:

We except to that.

The Court:
Overruled.

Q. Go ahead.
A. Will you please read that question?

(The question was read.)

A. Yes, sir.
Q. Now, you have told us—

Mr. Pettus:
We move to exclude the answer.

The Court:
Are you talking about cars belonging to other roads?

Mr. Smith:
Thank you, Your Honor. That's right.

The Court:
All right.

Mr. Pettus:
We move to exclude the answer on the same ground.

Q. Is that right?
A. It is other roads, as well as our own cars.
Q. Do you have them segregated?
A. That is correct.
Q. All right, let's talk about the other roads now. We are talking about those alone at this point. Mr. Major, would you say that you did not have in your office any record of each one of these cars at that time?

A. Yes, sir.

Q. I don't want to go into detail unless these gentlemen care to ask you further questions about it, but will you tell us what you did to put your hands on the cars that actually were involved in this tie-up here?

A. I secured the Yard train sheets for each train out of Nashville southbound to the Birmingham Division; those in and out of Boyles; in and out of Montgomery for the period October 23 through October 30; and out of Sibert Yard in Mobile for the period October 20 through the 30th as my basic information from which I was able to produce the number of days, I would say the minimum number of days that cars were delayed by reason of this work stoppage.

Q. All right, sir. Now, in doing that you came out with a number of car days that you determined the cars were tied up due to the strike, is that right?

A. Correct.

Q. How many car days was that?

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial.

The Court:

That, of course, goes to the ultimate figure here in issue. It would be perhaps better if he has these figures to show how many cars were involved. Do you have it broken down that way?

The Witness:

No, sir. That question has come up since I have been in Birmingham, Judge, and we just didn't count

them by the cars. We computed the days on each car and made up a total from that. I have the car days as a total for the other roads' cars separate from the L&N Railroad Company's owned cars.

The Court:

Well, it would not include cars that were for instance moving between Mobile and Montgomery?

The Witness:

No, sir. I have only totaled the delays when the cars were standing still, and I allowed a minimum of one day for them to get through a terminal.

The Court:

And you took the Yard sheets in all of the Yards involved?

The Witness:

That is correct.

The Court:

Do those Yard sheets reflect how long the cars were there?

The Witness:

No, sir, they reflect the car number. It gives me the car number and initial and where it was moving from and to, etc. And then when I tabulated this all together I saw how long a car stayed at a terminal. And I know whether it is a through car or a car destined to that terminal.

A car that was destined to the affected terminal, I did not charge any delay at that destination terminal, because I had no records to support the delay

that would be chargeable to this difficulty as against that which would be chargeable to the consignee. That is not included in my figures.

The Court:

Well, the records do reflect the delays, is that correct?

The Witness:

The records reflect the delays at the terminals en route to the destination, not at the destination.

The Court:

If a car was delayed on a switch somewhere between, it would not affect that, would it?

The Witness:

I didn't take any cars that were delayed other than at a terminal en route to the destination.

The Court:

All right.

Q. Mr. Major, in giving us this information, or making this study, do I understand that you have eliminated any cars except those in trains going from terminal to terminal?

A. Just through cars.

Q. Through cars?

A. Yes, sir.

Q. You have not included any cars that might have been lying on somebody's siding, or being at the customer's place for loading or anything of that kind?

A. No, sir, even though they were cars that were being delayed because we couldn't place them due to this difficulty.

Q. You made no effort, or they are not included?

A. No, sir.

Q. You didn't include those?

A. No, sir.

Q. Do you have the train sheets from which you worked here? In other words, the Judge asked you about the number of cars?

A. Yes, sir.

Q. Are you telling him you just haven't totaled the number of cars, but you just came out with car days?

A. That is correct.

Q. Tell me the car days on the foreign roads' cars.

Mr. Pettus:

We object to that as incompetent, irrelevant, and immaterial, not shown the number of cars involved, and based on the assumption of this witness as to the cause of the delay, whether routine or anything else.

The Court:

That goes to the weight of the evidence. You can cross examine him about that. Overruled.

Mr. Pettus:

We except. No item of recoverable damage.

A. 5,758 car days on other roads' cars, which, at the $2.40 per diem rate produces $13,819.20.

Mr. Pettus:

We move to exclude that answer on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Now did the L&N Railroad, under its agreement with the other roads, get charged for that much money on account of those cars?
A. Yes, sir, I pay it to them automatically.
Q. You make settlement with other roads regularly?
A. Yes, sir, monthly.
Q. That figure would have been in the various settlements with the various affected roads?
A. Yes, sir.
Q. I am not going to ask you about the L&N cars, Mr. Major, I am going to ask you, however, about this.
A. Yes, sir.
Q. If the L&N was unable to accept any cars which were offered to it, or were sought to be turned over to it by other roads, because of the stoppage, what was the situation on those cars, Mr. Major?
A. Yes, sir.

Mr. Pettus:
We object to that, it calls for a conclusion and opinion of the witness, unless he has personal knowledge.

The Court:
You mean were other cars tendered to the L&N?

Mr. Smith:

Yes, sir. I want to show that the L&N actually was charged and paid other roads another figure for cars that it was unable to accept, that it was expected and obligated to accept.

The Court:

I overrule the objection.

Mr. Pettus:

We except.

Q. Go ahead, Mr. Major.

A. Yes, sir, we paid other roads at Birmingham $1,662.14.

Q. Give me that figure just one more time, please, sir.

A. Yes, sir.

Q. That is $1,600—

A. $1,662.14 per diem on cars that we were unable to accept from them when offered, due to this labor situation.

Mr. Pettus:

We move to exclude that.

The Court:

Was that freight that was consigned over your line?

The Witness:

It was cars coming to our line that we, either loaded or empty, that we were obligated to accept. The rules say that when a railroad does not accept such cars, those that the road holds, the other road is holding, at 11:59 p. m., the road in difficulty must

pay per diem to that holding road for those cars that it holds. Is that clear?

Mr. Pettus:
We move to exclude all of those answers on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Now, Mr. Major, the cars that figured in that total that you have just given us of $1,662.14, are any of those cars reflected in the per diem charges that you told us about just prior to that time?

A. No, sir, that is an entirely separate and distinct item.

Q. Did you actually make settlements with the other roads for the inability of the L&N to accept those cars?

A. I did.

Q. Do you have here with you correspondence and records showing the approval of those settlements with the other roads?

A. I do.

Q. They are available to anybody that wants to see them?

A. Yes, sir.

Mr. Smith:
That's all. Your witness.

Cross Examination.

By Mr. Pettus:

Q. Do you mean that money was actually paid out to the other roads for these cars?

A. Yes, sir.

Q. Suppose that the other roads owed the L&N for some cars that they had, was that offset?

A. Each road reports to the other road, and drafts are drawn by our comptroller, one road against the other.

Q. In other words, if the NC&StL owed the L&N for a certain number of cars, car days, per car, that it had held, that would be offset against this figure that you have given us here, is that correct?

A. Not any more than my salary is by freight charges that the L&N Railroad earns.

Q. Well, let me ask you this, during this same period did the NC&StL owe some per diem on cars to the L&N?

A. Certainly.

Q. It did, didn't it?

A. Some L&N cars were on the NC&StL, and the NC&StL paid the L&N for those each day they were on their railroad.

Q. Each day they were on there?

A. Yes.

Q. And if the NC&StL owed the L&N fifteen dollars and the L&N owed the NC&StL thirty, there would just be fifteen dollars to strike the transaction off, wouldn't it, or did each of them give a check?

A. Not in my department; I don't know what the comptroller does. I don't understand so. I understand they draw drafts.

Q. They draw drafts for the full amount, and don't offset any, is that right?

A. Not according to my understanding, but I don't handle that, friend.

Q. You don't know whether these were actually paid or not?

A. Yes, sir, I know they are paid, because if they hadn't, they would have been right on my neck. I reported them down for the drafts, and I am sure they were paid.

Q. Did anyone ever report to you that they were paid?

A. No, sir, the report comes to me when they are not paid.

Q. I mean you never did hear any report that these had not been paid, did you?

A. That's correct.

Q. Routinely, cars—what are they called, these charges that you are talking about, this per diem charge, is that demurrage?

A. No, sir, demurrage is between railroads and shippers.

Q. Between the railroad and shipper?

A. Yes, sir.

Q. What do they call it between railroads?

A. Per diem.

Q. Per diem is all they call it, is that right?

A. Yes, sir, or car hire, either one you want to term it.

Q. Well, the per diem on the cars is incurred in just ordinary operation of the road, isn't it?

A. Oh, yes, the same as any other expense.

Q. Cars routinely, the L&N routinely incurs per diem charges on cars of other railroads, doesn't it?

A. Certainly.

Q. What have you done to eliminate those cars from the per diem figure up there in the $13,819.00?

A. I don't understand your question.

Q. Well, what have you done to eliminate cars of other railroads that are included in the $1[illegible]9.00 figure there where those cars were delayed just due to a routine delay in returning them?

A. I never included that delay, routine delay in there. It's not in the $13,000.00.

Q. How did you eliminate it?

A. By allowing a minimum of a day for cars to get through a terminal, which usually gets through in a matter of minutes or three to six hours.

Q. In other words, you eliminated by one day—

A. A minimum of one day.

Q. Isn't it a matter of routine that cars frequently just stay around as much as a week in various terminals?

A. Not through cars, my friend, no, sir.

Q. Haven't there been just routine charges of other railroads, for other railroad cars, where they have stayed around on the L&N tracks or in the L&N Yards for a week, and you paid per diem on them?

A. If a shipper delays a car in unloading it, you can call that routine. I pay for every day the car is on our railroad, period, regardless of the cause.

Q. This is not the only time you have ever paid any per diem, is it?

A. I pay it every day.

Q. You pay it every day?

A. Yes, sir.

Q. And sometimes cars are delayed more than one day, are they not?

A. As I said, of course, shippers and consignees delay them. Sometimes we will have some cars de-

layed for distribution, yes, sir. Those, incidentally are—I didn't take into consideration.

Q. How about shop cars?

A. Except in extreme rare cases they accrue per diem the same as if they were not shopped.

Q. Did you do anything to eliminate shopped cars?

A. No, sir, I did not.

Q. In this computation?

A. No, sir, I did not.

Q. You didn't have any information upon which to make any elimination?

A. I didn't endeavor to go into that because I knew it was minor, and I was making a very liberal allowance by excluding all cars that were handled in switching service.

For example, here at Birmingham, Alabama, we do a world of switching, as you probably have heard. None of those cars are included in my $13,000 odd dollars, although you must know that there were quite a number of them delayed.

Q. Were there about 2,500 people out here in this strike that you say you know something about?

A. I don't know.

Q. You don't know how many there were out?

A. No.

Q. What is the average wage per day that the average employee gets, from sixteen to twenty dollars?

A. I don't handle pay rolls, I couldn't tell you.

Q. You know though, don't you?

A. I hear various things. I know only about the ones that I have immediate charge over.

Q. Well, you have been with the Railroad 49 years, haven't you?

A. That's right.

Q. You keep up with things?
A. I have never handled pay rolls.
Q. You keep up with wages, don't you?
A. No, sir.
Q. Don't you know the average wage is between sixteen and twenty dollars?
A. I know that many of them get that much, yes, sir.
Q. Get that much?
A. Yes, sir.
Q. And you know that while these men were out those three days that they were not paid, don't you?
A. No, sir, I don't know a thing about that.

Mr. Pettus:
That's all.

Re-Direct Examination.

By Mr. Smith:
Q. Mr. Major, these cars that you told us about in that total, they were cars on through billing, they were through cars?
A. That's right.
Q. Made up in trains?
A. They were through cars, billed from one point to another.

Mr. Smith:
That's all. Thank you. May Mr. Major be excused?

The Court:
Those are cars of other railroads on through routes?

The Witness:
That's right. We have left out anything about the L&N cars.

Mr. Smith:
Yes, sir. There were L&N cars tied up?

The Witness:
Yes, sir, naturally.

Mr. Smith:
But you have allowed nothing for the use of those cars?

The Witness:
That's right. There was a heavy demand for cars at that time.

Mr. Smith:
All right, sir.

The Court:
Without objection this witness can be excused.

Mr. Smith:
All right, sir. You can be excused, Mr. Major. Thank you.

(Witness excused.)

Mr. Simpson:
The Plaintiff rests, Your Honor.

Mr. Smith:
May I write the total of this up here?

The Court:
Yes.

Mr. Pettus:
Your Honor, we have a motion we would like to make at this time.

Mr. Simpson:
Will you give us two copies of it?

Mr. Pettus:
I don't think I have another one. I haven't got but one here. I'll try to get you one.

The Court:
I will reserve ruling on it. You can renew it at the end of the evidence.
Call your next witness.

Mr. Pettus:
Mr. Southerland.

HOWARD EUGENE SOUTHERLAND, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:
Q. Will you please state your name?
A. Howard Eugene Southerland.
Q. Are you one of the Defendants in this case?
A. Yes, sir.
Q. Where do you live?

A. 4166 51st Avenue North, Birmingham, Alabama.

Q. Are you employed?

A. Louisville & Nashville Railroad.

Q. Louisville & Nashville Railroad?

A. Yes, sir.

Q. What do you do?

A. Locomotive engineer.

Q. Are you a member of any Brotherhood?

A. Yes, sir.

Q. Railway Brotherhood?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. And what is your average daily rate of pay?

A. $18.71.

Q. $18.71?

A. Yes, sir.

Q. Do you recall the occasion that the testimony has been about of this walkout in October, 1955?

A. Yes, sir.

Q. On the Sunday, October 23, did you work that day?

A. I got off at 7:30 on Sunday morning.

Q. At 7:30 Sunday morning?

A. Yes, sir.

Q. Now, the meeting that has been referred to as the Parker meeting, at Mr. Parker's house, did you attend that meeting?

A. Yes, sir.

Q. About what time did that meeting take place?

A. About 4:00 or 4:30.

Q. If you can recall the names of the men that were at that meeting, mention as many as you can recall?

A. H. K. Parker, J. B. Otts, Mason Weldon, Letchman, J. M. Brown, Jr., McCutcheon That's about all I can call offhand right now

Q. Was the meeting held at Mr. Parker's house?

A. Yes, sir.

Q. Whereabouts in the house was the meeting?

A. In the basement or the garage apartment.

Q. And were there men there from all crafts, or other crafts than the firemen?

A. Yes, sir.

Q. Will you just tell in a general way what you recall being said at that meeting?

A. Well, there was just an open meeting for the public, anyone could go that wanted to. There wasn't any closed doors or anything.

Q. What was the subject that was discussed?

A. Three hostler helpers, I believe it was.

Q. Three hostler helpers jobs?

A. Yes, sir.

Q. Just tell what you recall about what was said, and if you recall who said it just state who it was.

A. Every one was kind of in a small group together talking, and I think at one time Mr. Otts said that he had taken the subject up with Mr. Paschal, and it would be handled as the contract called for.

Q. It would be handled as the contract called for?

A. Yes, sir.

Q. All right.

A. I said "I think that's the proper thing to do."

Q. You said you thought that was the proper thing to do?

A. Yes. Mr. Kennedy said the same thing.

Q. And do you recall anything else particularly that was said at the meeting?

A. No, sir, that's about all I know of.

Q. Was there talk in the small groups going on throughout the meeting?

A. Yes, sir

Q. About how long was that, if you recall?

A. I don't know, about an hour I reckon, something like that.

Q. Do you recall what time you left approximately?

A. About 5:00 o'clock I reckon.

Q. About 5:00?

A. Yes, sir.

Q. You say you got there about 4:30, is that right?

A. Yes, sir.

Q. Tne meeting took about a half hour, didn't it?

A. Yes, 30 or 40 minutes.

Q. 30 or 40 minutes?

A. Yes, sir, something like that.

Q. About that?

A. Yes, sir.

Q. Did anybody go out of the meeting with you, I mean do you recall about that, how you left the meeting?

A. No, I went out as the group did?

Q. You went out as the group did?

A. Yes, sir.

Q. The meeting was breaking up when you went out?

A. Yes, sir.

Q. Where did you go after the meeting?

A. I went home

Q. You went home?

A. Yes, sir.

Q. Now, were you working that night or the next day?

A. No, I was supposed to work that night. I laid off.

Q. You laid off?

A. Yes, sir.

Q. What time did you lay off?

A. About 5:30 or 6:00 o'clock, I don't know exactly what time it was.

Q. How did you go about laying off?

A. Just called the Engine Dispatcher and reported off.

Q. Was the Engine Dispatcher that evening Mr. Jordan that testified here?

A. Yes, sir.

Q. Did you talk to him?

A. Yes, sir.

Q. Do you recall what your conversation with Jordan was or not?

A. I reported off sick. I had a headache and a cold, and he said "I guess so, everybody else is laid off."

Q. He said he guessed everybody else was lying off?

A. Yes, sir.

Q. All right.

A. Yes, sir.

Q. How long did you stay at home?

A. I don't know, about an hour or two hours.

Q. Then were did you go?

A. I went to Rex's Barbecue.

Q. About what time did you arrive at Rex's?

A. About 7:00 o'clock, I guess.

Q. And when you arrived there did you see anybody that you recall knowing, or not?

A. No one in particular.

Q. No one in particular?

A. No, sir.

Q. Were there many or few people there?

A. Well, there was several people around there.

Q. How long did you stay at Rex's, if you recall?

A. I stayed there until about 10:00 o'clock or 10:30, somewhere along there.

Q. About 10:00?

A. Yes, sir.

Q. Did you remain in the vicinity of Rex's, or did you leave the vicinity after you first arrived?

A. I stayed right there at the barbecue stand.

Q. Stayed right there at the barbecue stand?

A. Yes, sir.

Q. The Yards are located near the Rex's Barbecue stand?

A. Across the road.

Q. Just across the road?

A. Yes, sir.

Q. Did you ever go across the road onto the Company property?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Do you recall any time that evening when you saw any L&N employees leaving the premises?

A. Yes, sir.

Q. About what time was that?

A. About 8:30 or 9:00 o'clock, somewhere along there.

Q. And how many of them did you see? In other words, how large a group was there coming out?

A. Oh, they all just, just all come walking out.

Q. They all just came walking out?

A. Yes, sir, and t' e lights went out.

Q. Were they all walking along peaceably?

A. Yes, sir.

Q. As they walked out?

A. Yes, sir.

Q. Did you leave the Rex's Barbecue about 10:00?
A. Somewhere along there.
Q. Some time in that vicinity?
A. Yes, sir.
Q. I see.
A. I might have left a little earlier, I don't remember.
Q. Where did you go after you left Rex's?
A. I went home.
Q. Did you stay at home that evening?
A. Yes, sir.
Q. Did you sleep at home?
A. Yes, sir.
Q. On Monday, what time did you get up, do you recall?
A. Oh, about 7:30 I imagine.
Q. And did you go down near the Boyles Yard on Monday at any time?
A. Yes, sir.
Q. Where did you go?
A. I went back to Rex's Barbecue.
Q. You went back to Rex's Barbecue?
A. Yes, sir.
Q. Do you recall what time you arrived there?
A. Well, it was between 7:30 or 8:00 or 8:30, somewhere along there, early part of the morning.
Q. How long did you stay at Rex's, do you recall?
A. From then until maybe 11:00 o'clock; I don't remember.
Q. Did you stay in the cafe at that time or go outside?
A. No, I went all around there, out in front and inside too.
Q. Around the front and on the inside too?
A. Yes, sir.

Q. Do you recall anyone on Monday that you saw there?

A. No particular one, no, sir.

Q. Is Rex's where the L&N employees congregate?

A. Yes, sir.

Q. Normally?

A. That is what we call, might call it the hang-out for all of the employees on the Railroad.

Q. That includes the nonoperating employees, switchmen, firemen, and so on, is that right?

A. Yes, sir.

Q. Then that Monday afternoon, do you know where you were then?

A. I went back down there.

Q. You went home for lunch, did you?

A. Yes, sir.

Q. Then you went back down to Rex's?

A. Yes, sir.

Q. Did you stay around there throughout the afternoon?

A. Yes, sir.

Q. Monday night, do you recall where you were then?

A. Well, I went home and had supper, and then I went back again.

Q. You stayed at Rex's?

A. Yes, sir.

Q. In other words, you spent Monday at Rex's did you?

A. Yes, sir.

Q. How about Tuesday?

A. Well, I went down there Tuesday.

Q. Down to Rex's on Tuesday?

A. Yes, sir.

Q. And Wednesday, do you recall where you were Wednesday?

A. I imagine I went down Wednesday, I don't remember.

Q. In other words, you spent most of the time during the work stoppage at Rex's?

A. Yes, sir, that's right.

Q. When did you return to work, do you know?

A. It was either Wednesday night or Thursday night, I don't remember.

Q. Now, Mr. Southerland, you are charged in this complaint here with, or that you did conspire and combine to interfere with Plaintiff's said business, and pursuant to said conspiracy or combination did intentionally and without just cause interfere with and prevent Plaintiff from carrying on said business, in that you caused other employees of Plaintiff by means of intimidation or threats of force or violence not to perform their duties for the Plaintiff.

Did you personally do any of those acts charged in that complaint?

A. No, sir, I didn't encourage no one to stay out, or come out, or go back, either way.

Q. Did you authorize anybody else to do any of those acts charged in the complaint?

A. No, sir.

Q. Do you know of anybody else being guilty of those acts charged in the complaint, and after knowing that did you ratify anything that they did, along the lines charged in that complaint?

A. No, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Simpson:

Q. Mr. Southerland, you were not sick when you went to Mr. Parker's that afternoon, were you?

A. Yes, sir, I had a cold and I felt a little bad.

Q. You didn't intend to lay off, you didn't intend to let that cold keep you from staying on duty, did you, when you went to Parker's?

Mr. Pettus:

We object to that, what he intended.

The Court:

I sustain the objection.

Q. Did you have any plans, or had you made any statement to anybody that you didn't intend to stay on the duty board?

A. No, sir.

Q. After you had been to Mr. Parker's then you called up and laid off?

A. Yes, sir.

Q. As sick?

A. That's right.

Q. Now then, you say you did not conspire with anybody to shutdown the L&N Railroad. You went Mr. Parker's meeting?

A. Yes, sir.

Q. And the L&N Railroad was shutdown completely at Boyles from about 9:00 o'clock Sunday night until about 9:00 o'clock Wednesday night following, wasn't it?

A. Yes, sir.

Q. You were at Rex's, and you saw that, didn't you?

A. Yes, sir.

Mr. Simpson:

I think that's all, Mr. Southerland.

The Court:

All right. You are excused.

(Witness excused.)

Mr. Pettus:

Mr. Duncan.

JAMES H. DUNCAN, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Will you state your name, please, sir?

A. James H. Duncan.

Q. What is your occupation, Mr. Duncan?

A. Well, I am employed by the L&N Railroad, and then I practice law. I have two occupations.

Q. Yes, sir. Were you employed by the L&N Railroad on October 23, 1955?

A. Yes, sir.

Q. I will ask you first if you recall the work stoppage which occurred in October, 1955?

A. I do.

Q. Were you on duty the Sunday night, which I believe was October 23, the day the work stoppage, or the night that the work stoppage occurred?

A. I was on duty, yes, sir.

Q. Now, what was your job at that time?

A. Chief Clerk.

Q. What time did you go to work that Sunday?

A. 3:00 p. m.

Q. Would you tell the Court and jury, please, sir, the names of the people who were at work in your office out there on that shift?

A. I don't know that I can.

Q. Well, name all you recall?

A. I keep the pay roll, but I don't memorize it.

Q. All right.

A. I keep it daily, and most of the men work the same day, but there is extra men that work each day.

Q. Well, do you remember whether Mr. D. E. Mullins worked that day or not?

A. Yes, Mullins worked.

Q. Do you remember whether J. W. Scott worked or not?

A. I believe he did.

Q. All right.

A. I am not too sure, but I believe he did.

Q. Was Mr. Ben Mitchell present in that office on that Sunday night?

A. He was.

Q. Now, Mr. Duncan, I wish you would tell us, please, sir, just tell the jury what was the first thing that happened that came to your personal attention, which pertained to a work stoppage, or anyhing unusual there that evening?

A. Well, I suppose I would have to give that in narrative form, and start out at 3:00 p. m. when I went on duty. Do you want me to do that?

Q. Well, what happened at 3:00 p. m.?

A. I went to work, went on duty.

Q. Did you perform your normal routine duties?

A. No, I did not. Mr. Pyron, Assistant to the Trainmaster, was there. It was a little unusual for him to be there on Sunday.

Q. Mister who?

A. Mr. Pyron, P-y-r-o-n.

Q. Mr. Pyron?

A. Charlie Pyron. He is Assistant to the Trainmaster. Mr. Mitchell was the Trainmaster.

Q. Yes, sir.

A. He was there, but he was only there for, oh, maybe 30 minutes.

Q. Yes, sir.

A. He came to my desk and talked with me about routine Company business, nothing unusual. He left and stated he was going home.

About 4:00 p. m., or between 3:30 and 4:00 the Frisco Railroad over at the East Thomas Yards phoned me and said "We have received a cut of cars over here with two cars of stock in it, but we do not have any waybills for it."

Well, I searched around and found the bills, and went on over to the parking lot to try to head off Mr. Pyron to get him to take them over to them. They said they were going to set them back, and we would have to feed and water them, and they wouldn't make the train. Of course, you have got the 36 hour feed law involved, and things of that kind, and I didn't want—

Q. Yes, sir.

A. But as I got over to the parking lot I saw Mr. Pyron's car pulling out on the highway, and I missed him. It was about six blocks over to that parking lot.

And I came back and went in the Yardmaster's Office and got hold of W. M. Porter, Assistant General Yardmaster that was on duty, and I stated to him my family brought me out that afternoon in the car, and I didn't have my car, "How about getting your car out and taking me to the Frisco Railroad to carry those bills?" He said "O. K."

So we went back to the parking lot and went to the Frisco Railroad. I think that is the first time I had ever been to the Frisco Railroad, that is away on the back side like that. We got away back over here around Arkadelphia Road, we came in on the back side and got lost a time or two.

And just before dark we got back in there to where the switching crew was, and I told them not to throw the livestock back into the setback track of the L&N, that we had the bills. They said "Go over to this remote talking system and tell the man in that tower, and let him relay it to the Chief Clerk in the office that you have got the bills, and put them in the tube and shoot them up to the office."

And we put them in the tube and shot them up to the office. I guess we stood around and talked about 30 minutes with the switching crew, and then it was about dark, so we headed back towards Boyles. We got back there I would say between 6:30 and 7:00. Of course, I wasn't keeping time against myself.

When I got back to the office I found Mr. Mitchell at my desk. I have a big desk, double desk, and when two sits at the desk, one sits facing the other across the desk. He was sitting across the desk. And I came to my office, to my desk and sat down and he handed me a note. He wrote it while I was sitting there, and he handed me a note.

Q. All right, what did it say?

A. This note says "Come outside, I want to talk to you." So he got up and went outside, and I got up and followed him. I got outside and he asked me, says "Do you know anything about a strike coming off tonight?" I says "No." He says "You don't know anything about it?" I says "No, you are telling me." I says "I don't know anything about a strike'. I says "What are you doing over here anyhow, Sunday evening?"

He said "Well, I heard there was going to be a strike." Well, I said "I don't know anything about a strike. Come on, let's go back.' He said "Well, the reason I wanted you out here, I didn't want any of the boys to hear me talking to you about an unusual matter like that," I said "Well, I don't know a thing in the world about it."

Q. Mr. Duncan, to interrupt you just a minute, Mr. Mitchell had already completed his day's work that day before he came back, had he not?

A. Well, Mitchell really doesn't have any so-called "Day's work." He's on duty 24 hours a day, every day, its always been my information.

Q. Was it normal for him to be around there Sunday evening?

A. No it is not normal for him to be around there Sunday evening. He calls me a time or two on Sunday afternoon, but its not normal for him to be there. And if the Railroad is running in normal course, no wrecks or anything, he never comes out.

Q. You didn't have any wrecks or anything like that that afternoon, did you?

A. No, no wreck.

Q. What was the next thing that happened after you got back in the office?

A. Well, I don't know; my usual course of business, made out the pay roll; I presume answered the phone every time it rang. I do remember two or three times it rang, and somebody asked for Mr. Mitchell in sort of a manner as though presuming he was there. He had a lunch with him, sitting on the desk. I know I kidded him about "Let's eat that lunch."

Q. All right. Mr. Duncan, if I might interrupt you just a minute. Were you notified by any person or persons that a work stoppage had occurred that evening?

A. No, I was not notified.

Q. How did you come to find out about it?

A. Well, about—time rocked along until about 9:00 o'clock. About 9:00 o'clock, well, two men walked in the doorway across the office from me. That office is much larger than this room, I would say, and my office, my desk is in one corner of the office. I have a board on the wall behind my desk, that I operate, with a paddle, and the name of each employee is on a paddle, and when anyone calls in and asks to get off the board, I put him on the off board, and when he reports back, I put him back on his job.

I have sort of a secluded place over there, and I make out the pay roll, and answer all the phones. And there was two doors to go out by. The furthest door from me, which is away over in the corner, going towards what is known as the Yard Dispatcher's Office, two men came in and said "Let's go, boys, there's a strike on."

Q. Do you know who those two men were?

A. I do not.

Q. Had you ever seen them before?

A. I can't recall that I ever did. They were in work clothes.

Q. They were in work clothes?
A. They were.
Q. Are you positive of that?
A. I'm pretty sure they were.
Q. How long have you been with the Railroad?
A. 36 years.
Q. Now, Mr. Duncan, did either of these men have anything in their hands?
A. Not that I saw.
Q. Did you have a clear view of them when they came in?
A. Yes, I believe I did.
Q. And when they were there?
A. I would have to look over several desks between me and them, but, yes, I suppose from desk height, probably belt high on up, I had a clear view of them.
Q. How did you say they were dressed, sir?
A. The best I remember—I didn't pay any particular attention. The best I remember they had on work clothes.
Q. Had on work clothes?
A. Yes, sir.
Q. All right.
A. I just presumed they were working men there.
Q. Do you know a fireman by the name of Myrick?
A. I do not.
Q. Do you know a fireman by the name of Davis?
A. I do not.
Q. Do you know a fireman by the name of Baum, H. M. Baum?
A. I do not.
Q. Well, look around the Courtroom and see if you see anybody here that was in there that night?
A. No, I don't believe I do.

Q. All right. Where was Mr. Mitchell seated when these men came in?

A. By me, across the desk from me.

Q. Across the desk from you?

A. That's right.

Q. How many men did you say there were?

A. Two.

Q. Two men?

A. Yes, sir.

Q. How long did they stay in there?

A. Oh, less than five minutes, I am sure.

Q. Did they say anything other than what you have already testified to?

A. That's all I heard them say "Let's go, boys, there's a strike on."

Q. You saw nothing in their hands, is that correct?

A. I saw nothing in their hands.

Q. The two men then left the office immediately, is that correct?

A. Yes, sir.

Mr. Simpson:

We object as leading. The witness didn't say they left immediately, he said they stayed in there some minutes.

The Court:

Don't lead the witness.

Mr. Taylor:

All right, sir.

Q. When did they leave, after they made this statement?

A. They went out the same door which they came in.

Q. How long did they stay there?

A. Oh, a minute or two, less than five minutes.

Mr. Taylor:

I believe that's all, Mr. Duncan.

Cross Examination.

By Mr. Gibson:

Q. When you went to work at 3:00 o'clock everything appeared to be normal in the Yard, didn't it?

A. Yes, sir, it did.

Q. Until that little conversation with Mr. Mitchell outside of the office, outside of the Yard Office later in the evening?

A. Yes, sir.

Q. Everything continued to appear normal?

A. Yes, sir.

Q. And after that conversation up until approximately 9:00 o'clock everything remained normal?

A. You see, one unusual thing happened, and that was that I was really away from the office the biggest part of the time, from about 4:00, say until—on account of leaving these bills, I just left the office and carried the bills and left one of the boys, I forget which one, I told him to answer the phone, and I would be at the Frisco Railroad office or somewhere in that vicinity.

Q. So far as you could tell—

A. That's the only unusual thing about the day's business that I noticed that day.

Q. I understand.

A. Yes, sir.

Q. Now, as a veteran railroad employee of thirty odd years, according to your observation, from 3:00 o'clock when you went to work until 9:00 o'clock, when these two men walked in the Yard Office and said "There's a strike on, let's go", or "Let's get out, that Yard was functioning entirely normally, wasn't it?

A. So far as—the office was.

Q. All right.

A. Of course, I am not on the Yard.

Q. Yes, sir.

A. I presume that the Yard was.

Q. That's what I mean.

A. The office was, of course, functioning normally, yes, sir.

Q. You saw nothing abnormal about the way the Yard was functioning, did you?

A. I saw nothing abnormal at all.

Q. Then about 9:00 o'clock you said two men came into the Yard Office. And will you repeat what you heard them say as well as you can recollect?

A. Well, in substance, and this may be the verbatim words "Let's go, boys, there's a strike on." I would rather in substance say that is the words they used.

Q. You were sitting there?

A. Yes, sir.

Q. You described that office as larger than this room?

A. Yes, sir, it is some larger.

Q. You were sitting there about as far from the door they came in as you could have sat?

A. Yes, just about as far, and still be in the office.

Q. Yes, sir. In answer to one of Mr. Taylor's questions you stated that you could see these two men from approximately the waist up?

A. Yes, sir. There was one, and maybe two desks, between me.

Q. If at the time you looked at them these two men had had sticks 2 or 3 feet long in their hands down by their side, like this (illustrating), you wouldn't have seen those sticks, would you?

A. I might not have seen them.

Q. All right, sir.

A. No, sir.

Q. Now, when the announcement was made in your hearing that there was a strike on, what did you do then?

A. Stayed right there at my post of duty.

Q. For how long?

A. Until the lights went out. When the lights went out, well I shut off my operation then. That wound me up.

Q. Did Mr. Mitchell turn the lights out?

A. I wouldn't think so. He was sitting there by me.

Q. Did you turn them out?

A. No, sir.

Q. Did anybody there on duty in the Yard Office, so far as you know, any person who belonged there turn them out?

A. I wouldn't think so.

Q. So if they were turned out they were turned out by somebody who had no duty to perform in the Yard Office, is that correct?

A. No one has the duty of—well, let's see, that light box, I suppose you would call it a master electric system, is about as far as from here to that last gentleman on the jury from me, to my right, over against the wall.

Q. Yes, sir.

A. And there is a desk between me, and there is two or three upright racks where you hang clothes. I may and may not have a clear view, it just depends on whether those were shifted, in taking clothes off and on, but about 20 feet from me.

Q. Nobody, so far as you know, who had any business, turning the lights off---

A. No, sir.

Q. —inside of that Yard Office turned them off, did they?

A. No, sir, no, sir, no one.

Q. If they were turned off they were turned off by some one who had no—

Mr. Taylor:

If the Court please—excuse me.

Q. —they were turned off by some one who had no regular duties to perform in the Yard Office, did they?

Mr. Taylor:

We object as argumentative. He stated he didn't know who it was.

The Court:

I sustain the objection.

Mr. Taylor:
He said he didn't know who turned them out.

The Court:
I sustain the objection.

Q. You said that what caused you to leave the place was the turning out of the lights?

A. Well, let's see now. I heard numerous voices outside, and I was reasonably sure that there was a crowd out there. And I remember remarking to Mr. Mitchell when the lights went out—he had a flashlight—he and I were still together. I believe he had called the Superintendent, Mr. Kirchner, I believe he had, and talked to him, and given him a report on details up until then. And he had a flashlight. He said something about getting his cigarettes upstairs. Somebody hollered "Let's go."

Q. Wait a minute. Was that hollered "Let's go" after the two men had come in the Yard Office?

A. Oh, yes, some little time.

Q. When did that occur?

A. I sat back down at my desk, of course, and went on to work, answering the phones, and everything after they left.

Q. Did that call, the second call "Let's go", did that come from outside the Yard Office?

A. Yes, that came from outside.

Q. Was there a pretty good size group of men outside?

A. Yes, I would say there was. Of course, I didn't know how many was out there then.

Q. You could hear them, couldn't you?

A. I could hear them, and more than one voice.

But later, after the lights went out, I did go outside with Mr. Mitchell, and I—

Q. There was a crowd out there?

A. There was a number of men, but all of the lights in the whole Yard was out, and about all I could see was by Mr. Mitchell's flashlight. All of the arc lights in the whole System was out, and so it was dark inside—and I presumed—I was thinking maybe it was probably lighter on the outside than in, but it was just as dark when we got outside.

Q. Well, somebody turned off the lights so you couldn't work?

Mr. Taylor:
We object to that.

A. That's right.

The Court:
I sustain the objection.

Mr. Taylor:
I move to exclude it.

The Court:
That is excluded, gentlemen.

Q. When Mr. Taylor asked you to look around the room and tell the jury whether you could identify anyone who came into the office, any of these men, as being among those who came into the Yard Office and made that announcement "The strike is on, let's go", you answered that you couldn't identify any of them?

A. Yes, sir.

Q. Now, Mr. Duncan, you didn't mean to tell this jury under oath as a matter of fact that none if these men came in, did you?

Mr. Taylor:
We object to that. That is invasive of the province of the jury. He testified he couldn't identify them.

The Court:
I overrule the objection.

A. None of these faces that I see here were the two that came in. I know some of theese faces, and I know some of these men by name.

Q. And you swear to this jury that none of these men were included in the two that came in the door?

A. They were not, because I would have known them. They were not.

Q. Well now, you did not know Baum, H. M. Baum, before this, did you?

A. No. I still don't know him. He may be one of the gentlemen over there with the familiar face, but to put that face to the name Baum—is it Vaughn or Baum?

Q. Baum, B-a-u-m.

A. But to put that face to the name Baum, I just couldn't do it.

Q. And you don't know T. E. Davis, didn't know him before?

A. No, sir.

Q. October 23?

A. I just don't know either one of those men, right now I don't know them.

Q. You didn't know Claude Myrick before that then, did you?

A. No, sir, I didn't.
Q. You didn't know C. L. McCutcheon?
A. No.
Q. And you didn't know Marvin Hall?
A. I did not.
Q. Nor Bruce Barnett?
A. I did not.
Q. Do you know them now?
A. I don't know a one of them now.
Q. All right, sir.
A. I know Mr. Parker, I have known him all his life.
Q. You left that Yard Office on Sunday night, October 23, about 9:00 o'clock because you were ordered to leave and you were afraid to stay, for your own safety?

Mr. Taylor:
Just a minute.

Q. There was a mob outside, didn't you?

Mr. Taylor:
We object to that.

The Court:
I sustain the objection as to why he left.

Q. Will you tell the jury whether or not at some time since that occurrence you talked to Mr. James A. Robey, about the strike and work stoppage?
A. That's true, I went to Mr. Gibson's office and made a statement to Mr. Robey.
Q. Yes, sir, and you stayed there quite some time?

A. Yes, sir.
Q. Discussed it at some length?
A. I did.
Q. I will ask you, Mr. Duncan, whether or not during that conversation that you had with Mr. Robey, as you related, you said to him in substance "I was ordered to leave, and I was afraid to stay for my own safety, as there was a mob outside"?
A. I probably said that.

Mr. Gibson:
All right, sir. You can come down.

Mr. Taylor:
That's all.

(Witness excused.)

The Court:
Call your next witness.

Mr. Taylor:
Call Mr. John C. Smith.

JOHN C. SMITH, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:
Q. Will you please state your name?
A. John C. Smith.
Q. You are employed by the L&N Railroad, are you not?

A. Yes, sir.

Q. You were employed in October, 1955, by the L&N?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. What was the nature of your employment in October, 1955?

A. Crew Caller at Boyles.

Q. Crew Caller at Boyles?

A. Yes, sir.

Q. Were you on duty Sunday, October 23, 1955?

A. No, sir.

Q. You were off duty?

A. Yes, sir.

Q. When were you next due to go to work?

A. I was supposed to go to work on Tuesday.

Q. On a Tuesday?

A. Yes, sir, but I went down Monday morning.

Q. Did you go down there Monday morning?

A. Yes, sir.

Q. At the time when you arrived at Boyles on Monday, did you observe that there was a work stoppage in progress?

A. Well, sir, when I was up there there was 12 or 15 men out there.

Q. At what entrance?

A. At 39th Avenue and Vanderbilt Road, the side gate.

Q. 39th Avenue at Vanderbilt Road?

A. Yes, sir.

Q. Did you see anybody that you recognized down there that Monday morning?

A. Yes, sir.

Q. Name some of the people that you remember you saw.

A. Mr. Wilkes, Louis Wilkes, Mr. Baum, Mr. Jack Wall, and I don't recall, 12 or 15 or 20 men standing around there talking.

Q. What occupation is Mr. Wilkes in?

A. He is a switchman at Boyles.

Q. What occupation is Mr. Baum in?

A. He is a fireman.

Q. Did you engage in any conversation with Mr. Baum there on that Monday morning?

A. Yes, sir.

Q. Tell the jury what you said to him and he said to you.

A. Well, sir, when I went up Mr. Baum was standing by the gate, and there was several people standing around, and I asked Mr. Baum what was going on, and he said they were having labor trouble. I asked him was there anybody in there working, and he said "No, sir." He said "The gates have been open, if anybody wanted to go in, but there hasn't been anybody to go in so far."

Q. Did you hear Baum direct anybody not to go in?

A. No, sir, he did not. I stood around there until, oh, 10:30 or 11:00 o'clock, and then went on down towards the cafe.

Q. Just before we leave that, did you see anybody threatened while you were there?

A. No, sir, I did not.

Q. Did you see anybody try to go in the gate?

A. No, sir.

Q. And prevented from going in?

A. If they wanted to go in the gate was open, wasn't anybody standing around there to keep them from it.

Q. Did you go back down there on Tuesday morning?

A. Yes, sir. In fact, I hung around there, off and on there and down at the roundhouse until we went back in.

Q. Did you see Mr. Baum down there on Tuesday morning?

A. I don't recall. I think he was around there. I don't recall.

Q. Do you recall any specific day during the work stoppage other than Monday that you saw Mr. Baum around there?

A. No, sir.

Q. In all the times that you were around there did you see anybody prevented from going in the gate?

A. No, sir. I would go on down by the roundhouse and get me a cup of coffee. I never heard anybody tell them they couldn't go in or anything.

Q. Did you see any pickets parading out there?

A. No, sir, there wasn't any pickets.

Q. There wasn't any pickets down there?

A. No, sir.

Mr. Taylor:

I believe that's all.

Cross Examination.

By Mr. Simpson:

Q. Do you know Mr. Chapman?

A. Mr. Champan, the fireman?

Q. Yes.

A. Yes, sir.

Q. You saw him here on the stand yesterday, didn't you?

A No, sir, I did not.

Q. You were not here yesterday?

A. No, sir, not all day. I was up off and on, but I didn't see Mr. Chapman, no, sir.

Q. Did you see Mr. Chapman on picket duty out there?

A. No, sir.

Q. Did you see Mr. McCutcheon on picket duty out there?

A. I didn't see anyone on picket duty.

Q. You just say there weren't any pickets?

A. No, sir.

Q. You saw people standing around those entrances, didn't you?

A. Yes, sir.

Q. People standing around there all during the strike, weren't they?

A. Yes, sir.

Q. Doing a lot of whittling too, weren't they?

A. Yes, sir, I whittled some myself.

Q. You did some whittling?

A. Yes, sir.

Q. How big a knife did you have to whittle with?

A. Just a regular pocket knife.

Q. Have you got it with you?

A. No, sir, I don't even have one now.

Q. You haven't got it with you?

A. No, sir.

Q. Most everybody around there was whittling on sticks and clubs, weren't they?

A. Yes, sir.

Q. Yes.

A. Well, not most everybody. Some people whittled off and on all the time.

Q. You say that those fellows whittling around there, you didn't see anybody try to go in, with those fellows all whittling around there?

A. No, sir, I sure didn't.

Q. You have the reputation, haven't you, out there, Mr. Smith, of being one of the most dangerous men out there in that Yard?

A. No, sir. I think I am about one of the most likeable persons around there.

Q. I am sure you are.

A. I've got a good reputation.

Q. But you are known as a dangerous man in that Yard, aren't you?

A. No, sir.

Mr. Simpson:

All right, you may come down.

Re-Direct Examination.

By Mr. Taylor:

Q. You didn't see anybody with any clubs around there?

A. No, sir.

Mr. Taylor:

That's all. You can come down.

Mr. Simpson:

That's all.

Mr. Taylor:

May he be excused?

The Court:

The witness may be excused.

(Witness excused.)

LOUIS WILKES, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Will you state your name, please, sir?

A. Louis Wilkes.

Q. And you are employed by the L&N Railroad, are you not?

A. Yes, sir.

Q. What is the nature of your occupation, what is your job?

A. Switch Engine Foreman.

Q. Were you so employed in October, 1955?

A. Yes, sir.

Q. Now, Mr. Wilkes, do you know the work stoppage which occurred in October?

A. Yes, sir.

Q. Did you work Sunday, October 23?

A. Yes, sir.

Q. What time did you get off?

A. I beg your pardon, I didn't work that day.

Q. You didn't work that Sunday?

A. No, sir.

Q. What time were you due to go to work Monday?

A. 7:00 o'clock.

Q. Did you go to the Boyles Yard Monday morning?

A. I did.

Q. That is the 24th of October?

A. Yes, sir.

Q. At what entrance to the Yard did you come to, if you came there?

A. Pinson Pike.

Q. Pinson Pike?

A. Yes.

Q. Does that have a name?

A. Well, I think it is 39th Avenue, I believe it is, I don't know exactly what the name of the street is, but I believe that's what it is.

Q. Did you see any people around that gate when you arrived there?

A. Yes, sir, there was several there.

Q. Was there quite a crowd there?

A. Yes, sir.

Q. Did you see anybody that you recognized by name or that you knew?

A. Yes, sir, there were several I knew, switchman, shop men.

Q. Did you see people from all crafts on the Railroad there?

A. Yes, sir, all crafts.

Q. Clerks, switchmen, firemen?

A. Yes, sir.

Q. Engineers?

A. Yes, sir.

Q. Tell the Court and jury the names of some of the people you saw, if you remember them?

A. Well, I couldn't hardly begin, there was so many of them there.

Q. Well, do you know Mr. H. M. Baum?

A. Yes, sir.

Q. What is his occupation?

A. He is a fireman.

Q. Did you see him there that morning?

A. I did.

Q. All right, did you have any conversation with Mr. Baum there?

A. Yes, sir, when I got there he said they were having labor trouble.

Mr. Simpson:

We object to the conversation, self-serving declarations. They were not made to anybody acting for the Company. It is just a conversation between Mr. Baum and friends.

The Court:

I exclude it. It would be self-serving. I sustain the objection.

Q. Did you hear anybody inquire about what the trouble was inside?

A. Yes, sir, I asked him what the trouble was, and they just said it was labor trouble.

Q. Who said that?

A. Mr. Baum told me that they had labor trouble.

Q. Did you hear anybody ask permission to go in?

A. Yes, sir, I asked permission to go in, when the Local Chairman said we could go in and make a time claim, to see if the Company would pay us for being there that day, on account of the firemen being out. And I asked Mr. Baum if I could go in, and he said "You can go right on in and make out your time ticket, no objection."

Q. Was the gate open?

A. Yes, sir.

Q. Did you see anybody prevented from going in there?

A. No, sir.

Q. Did you see anybody standing around with clubs in their hands?

A. I did not.

Q. Did you see anybody there with a picket sign?

A. No, sir.

Q. Did you see anybody marching up and down in front of the gate?

A. No, sir, just gathered around the gate, they was all talking.

Q. Was there anybody threatened in your presence or hearing?

A. Not that I heard.

Q. Was there anybody molested in any way in your presence or hearing?

A. No, sir.

Q. Did you go back down there on Tuesday?

A. I did.

Q. Did you see Mr. Baum there on that day?

A. To the best of my recollection I did.

Q. Did anyone in your presence or hearing say anything about going in the Yard at that time?

A. No, sir, I don't believe they did, just the same as it was.

Q. Did anybody make any effort to go in?

A. No, sir.

Q. Was anybody threatened or struck or intimidated in your presence or hearing?

A. No, sir, wasn't.

Q. Did you see any violence of any kind on Monday or Tuesday?

A. None whatsoever.

Q. Did you go down there on Wednesday?

A. Yes, sir.

Q. Was there about the same situation?

A. The same situation Wednesday.

Q. Mr. Wilkes, I believe on these three days you have testified about, Monday, Tuesday, and Wednesday, well—I will ask you what were the normal hours of your shift on those days?

A. From 7:00 to 3:00.

Q. Did you stay in the vicinity of the Boyles Yard there from 7:00 to 3:00 on each of those days?

A. No, sir.

Q. How long did you stay down there?

A. Oh, I would say a couple of hours each day, then went back home.

Q. On either of those three days did you see any work going on in the Yard?

A. No, sir.

Q. You came down there for the purpose of seeing if there was any work, so you could go to work, is that right?

Mr. Simpson:
We object to that.

The Court:
I sustain the objection.

A. No, sir.

Mr. Taylor:
We except. That's all.

Cross Examination.

By Mr. Gibson:

Q. You told the jury in response to a question by Mr. Taylor that you knew Mr. Baum?

A. Yes, sir.

Q. And that on Monday morning after the strike or work stoppage began you were at the 39th Avenue gate?

A. Yes, sir.

Q. Is that what you call the main gate?

A. Yes, sir.

Q. You encountered Mr. Baum there?

A. Yes, sir.

Q. And there was a large crowd of people?

A. Yes, sir.

Q. Tell the jury what some of these people were doing. What were they doing, just standing around there?

A. They were just standing around talking.

Q. Did you see any whittlers?

A. Any which?

Q. Any whittlers.

A. Oh, yes, always whittling.

Q. I believe you told the jury on direct examination that you saw your friend Baum there?

A. Yes, sir.

Q. And that you went up to him and you asked him if it would be all right, if you could go in and make out a time card or something?

A. That's right.

Q. And he gave you permission to do it?

A. Yes, sir.

Q. Can you tell the jury how you came to select Mr. Baum to ask that question of?

A. Well, he just happened to be standing there.

Q. In the ordinary course of events do you ask somebody's permission to go on your employer's property through a gate?

A. No, sir.

Q. How did you come to pick out H. M. Baum to ask whether you could go on in?

A. Because the firemen was having labor trouble, and he is the first one I saw.

Q. The switchmen were not having any labor trouble, were they?

A. No, sir.

Mr. Gibson:

Thank you. You may come down.

Mr. Taylor:

That's all. Can this witness be excused?

The Court:

The witness will be excused. We wont have time for another witness now.

Gentlemen we are going to recess until tomorrow morning at 9:00 o'clock. Be back in your places at 9:00 o'clock. In the meantime, don't talk to anybody about the case.

(Whereupon, at 4:35 p. m. an adjournment was taken until 9:00 a. m., Thursday, September 27, 1956.)

Thursday, September 27, 1956,
9:00 A. M.

The Court:

Proceed

Mr. Pettus:
Mr. Grissom.

W. L. GRISSOM, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Are you Mr. W. L. Grissom?
A. That's right.
Q. You are one of the Defendants in this case?
A. Yes, sir.
Q. Where do you live?
A. 5332 5th Terrace South.
Q. Here in Birmingham?
A. Yes, sir.
Q. Are you the W. L. Grissom that is named in this notice of the abolishment of the hostler helpers jobs that is marked Defendants' Exhibit 1?
A. Yes, sir.
Q. In this notice it states that your seniority date is September 30, 1925?
A. That's right.
Q. Did you hold that seniority as a hostler helper?
A. Yes, sir.
Q. When your job was abolished—when did you say it was abolished?
A. September 23—I mean October 23.
Q. October 23?
A. 1955.
Q. October 23, 1955?
A. Yes, sir.

Q. And you were working on the first shift?

A. Yes, sir.

Q. When your job was abolished did you have seniority in any other job with the L&N Railroad Company?

A. I did not.

Q. You did not have any?

A. No, sir.

Q. In other words, when your job as outside hostler helper was abolished you couldn't roll anybody off of their job?

A. No, I couldn't.

Mr. Pettus:

Now, Your Honor, we will offer this Defendants' Exhibit 1 that has been marked for identification. We offer it in evidence now.

The Court:

All right.

Q. Mr. Grissom, what labor organization, if any, are you a member of?

A. The Brotherhood of Locomotive Firemen and Enginemen.

Q. Is that the same organization that Mr. J. B. Otts, Jr. is Local Chairman of?

A. That's right.

Q. And as hostler helper were you covered in the agreement between the L&N Railroad Company and the Locomotive Firemen and Hostlers?

A. Yes, sir.

Q. Now, did you attend a meeting of your labor organization, that is the Firemen's Organization, on the Friday before this October 23?

A. I did.

Q. Where was that meeting held?

A. At Inglenook I believe it was the Masonic Hall there on Vanderbilt Road. I don't know the number.

Q. Do you recall how many were at that meeting?

A. Yes, about it.

Q. About how many were there?

A. I would say seven or eight or nine.

Q. That were at the meeting?

A. Yes, sir.

Q. At that time was this notice, or was there any discussion about the abolition of the hostler helpers jobs?

A. Well, no up there. There was outside there, before we went in and after we came out.

Q. Before you went in and after you came out?

A. Yes, sir.

Q. Was there any letter read or anything there at that meeting?

A. There was a letter from Mr. Jake Paschal.

Q. Who is he?

A. He is our General Chairman.

Q. A letter was read?

A. Yes, sir.

Q. At that meeting?

A. Yes, sir.

Q. With regard to the hostler helpers jobs?

A. Yes, sir.

Q. After you got outside was there any further discussion with regard to the hostler helpers jobs?

A. Yes, we decided we would have a little meeting, you know, individual meeting, and gather up the circumstances on the way to handle this, you see, with Mr. Paschal.

Q. How many were there? Where was this other little gathering held?

A. It was down right across from the hall there. There is a post there. I don't know that street.

Q. Were you out in the street?

A. No, we were standing kind of on the curb there.

Q. Standing out there?

A. Yes, sir.

Q. In the street?

A. Yes, sir.

Q. How many were in that group?

A. Well, there was probably six or seven or eight.

Q. And do you recall who was there?

A. Well, Shorty Parker and McCutcheon, Red Fleming, and myself, and I believe Mr. Thomas and Mr. Otts, he was around there.

Q. Now, Red Fleming is the man that first testified in this case, isn't he?

A. Yes, sir.

Q. And he was one of the men that occasionally did some work as a hostler helper?

A. Yes, sir.

Q. Mr. McCutcheon was another one of the hostler helpers, was he?

A. Yes, sir.

Q. Was it decided there that the meeting was to be at Shorty Pa.ker's house?

A. Yes, sir.

Q. When was the meeting to be held?

A. Sir?

Q. Was it decided then?

A. You mean when it was decided on?

Q. Yes.

A. 4:30.

Q. At 4:30 on Sunday?

A. Sunday.

Q. Did you work the next day, on Saturday, do you recall, after that?

A. Yes, sir.

Q. You worked on Saturday?

A. Yes, sir.

Q. Did you work on Sunday?

A. I did.

Q. The day of the meeting?

A. Yes, sir.

Q. About what time did you get off?

A. I got off at 3:00 o'clock, 3:00 p. m.

Q. 3:00 o'clock?

A. I had to change clothes, take a bath, pack up my work clothes.

Q. Did you change clothes at the Yard or did you go home?

A. We changed clothes in the washroom, next to the roundhouse office.

Q. Next to the roundhouse office?

A. Dispatcher's Office.

Q. Then did you go on over to the Parker meeting place, Parker's house?

A. Well, I went out near the L&N Coffee Shop there and stood around a little while, and then we went to the meeting.

Q. Where is the L&N Coffee Shop?

A. Right, you might say directly in front of the main entrance to the roundhouse.

Q. Is the L&N Coffee Shop in the same vicinity as Rex's Barbecue?

A. Well, it was I guess a half a block.

Q. About a half a block away?

A. Yes, sir.

Q. After being around there did you go on over to Parker's house?

A. Yes, sir.
Q. Did you go with anyone?
A. No, sir, I went by myself, in my own car.
Q. You had your own car?
A. Yes, sir.
Q. And you went by yourself?
A. Yes, sir.
Q. Now, when you arrived at Parker's house about what time did you get there?
A. About 4:15.
Q. About 4:15?
A. Yes, sir.
Q. Were you among the first to arrive?
A. There was several there.
Q. All right.
A. There was several standing around there when I got there.
Q. Several standing around?
A. Yes, sir.
Q. Where was the meeting at Parker's house actually held?
A. It was in a garage basement.
Q. In a garage basement?
A. Yes, sir.
Q. About what time did everybody get into the basement if you know?
A. About 4:30.
Q. About 4:30?
A. Yes, sir.
Q. Do you recall the men that were there in the basement?
A. Yes.
Q. Can you name them?
A. Yes, some of them.
Q. Name the ones you recall.

A. Well, Mr. Thomas, Mr. Otts, Mr. Parker, Mr. Brown. Mr. Southerland, Barnett, Letchman, Mr. Weldon, Mr. McCutcheon, Mr. Anderson, Mr. Hall, Mr. Sutterlin. I believe that's all, I don't know whether that's all of them or not.

Q. Did you say anything at the meeting that you recall?

A. Well, I did say I believe one thing.

Q. And was the subject of the meeting a discussion of the abolition of these hostler helpers jobs?

A. Why, yes, and the handling of it through the General Chairman.

Q. Now, will you just tell as well as you can recall what was said at that meeting, and if you recall who said it, state his name? Just give your recollection of what occurred there.

A. Well, we kind of were in groups around there, and everybody was talking. They were going to handle it up through the proper procedure. I believe Mr. Otts said that's the way they would handle it, and gather up all the circumstances, see, that was the purpose of the meeting.

Q. About how long did the meeting last?

A. Oh, 30 minutes I guess.

Q. About 30 minutes?

A. Yes, sir.

Q. Did you leave when the rest of them left?

A. Yes, probably before some of them left.

Q. You left probably before some of them left?

A. Yes, sir.

Q. Where did you go after the meeting?

A. Red Fleming, he rode with me from—we came down Jefferson Boulevard and he got out at Jefferson Boulevard and Pinson or Vanderbilt Road I believe they call it. He said his wife was over there somewhere, and he got out there.

Q. Then where did you go?
A. Went straight home.
Q. You went on home?
A. Yes, sir.
Q. Now, later that day did you go anywhere else?
A. Yes.
Q. Where did you go?
A. I went down to the station.
Q. Went where?
A. Yes, sir, to the station.
Q. You went down to the station?
A. Yes, sir.
Q. You mean downtown?
A. Yes, sir.
Q. In Birmingham?
A. Yes, sir.
Q. To the L&N station?
A. Yes, sir.
Q. What did you do there?
A. Well, there was a switchman called me. I was gone to North Birmingham to carry a maid at that time, and he called my wife, and he wanted to know of her if I knew anything about any trouble on the L&N, and she told me about it when I got back.

Mr. Simpson:
We object to conversations between third parties. This Defendant himself was not present.

The Court:
I sustain the objection, gentlemer ...at is excluded from your consideration.

Q. Was there a telephone call received by your wife?

Mr. Simpson:
We object to that, unless he was there and knows for himself, may it please the Court.

The Court:
I sustain the objection.

Mr. Simpson:
That's leading.

The Court:
Were you present?

The Witness:
Sir?

The Court:
Were you present when your wife received the call?

The Witness:
No, sir.

The Court:
I sustain the objection.

Q. After you got back to the house from taking the maid somewhere did you make a trip?
A. I made a trip.
Q. Where did you make a trip to?
A. To the L&N station.
Q. What did you do when you got to the L&N station?
A. I parked in front of the Superintendent's Office and walked up in the little parkway and looked under the shed. I didn't see a thing or anybody.

The Court:
What time was this?

The Witness:
That was about 9:00 o'clock.

The Court:
9:00 o'clock?

The Witness:
9:05.

Q. About what time?
A. About 9:00 o'clock.
Q. All right.
A. And then I left there about 9:05.
Q. You got there about what time?
A. 9:00.
Q. About 9:00?
A. Yes, sir.
Q. This is Sunday night?
A. Yes, sir.
Q. What time did you leave there?
A. 9:05.
Q. You just stayed about five minutes?
A. Yes, sir.
Q. Then were did you go?
A. I came out to Rex's.
Q. You came out to Rex's?
A. Yes, sir.
Q. About what time did you arrive at Rex's?
A. About 9:30.
Q. Did you see anybody down at the L&N station?
A. There wasn't anybody there, I didn't see a soul.
Q. You didn't see a soul?

A. No, sir.

Q. When you arrived at Rex's did you see anyone there?

A. Yes, there was, the place was full of men, and all over the outside there.

Q. Were they railroad men, you mean?

A. Yes, sir.

Q. Could you tell?

A. Yes, all railroad men.

Q. Were all crafts there that you saw?

A. All crafts, yes, sir.

Q. How long did you stay at Rex's?

A. Well, I stayed out there until 6:30 next morning.

Q. You stayed at Rex's until 6:30 next morning?

A. Around that.

Q. What did you do on Monday during the work stoppage, Mr. Grissom?

A. Well, I went home Monday morning and went to bed, slept until a little after 12:00.

Q. Then were did you go, if anywhere?

A. I came back down to Rex's.

Q. Came back down to Rex's?

A. Yes, sir.

Q. How long did you stay there?

A. Oh, I stayed around there until probably 5:00 or 6:00 o'clock. I think I went back home then.

Q That is Monday afternoon you spent at Rex's, then came home?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Then did you go anywhere that night?

A. I came back out to Rex's.

Q. You went back out to Rex's?

A. Yes, sir.

Q. Now, on Tuesday, what did you do on Tuesday?
A. I came out there Tuesday morning.
Q. You came to Rex's?
A. Yes, sir.
Q. How long did you stay there?
A. I stayed around there practically all day, until 6:00 o'clock, when I left.
Q. You left Rex's about 6:00 on Tuesday?
A. Yes, sir.
Q. Did you go anywhere Tuesday night?
A. Yes, I went down to the L&N station at 6:00 o'clock. I had an appointment there to meet a fellow named "Slim."
Q. About what time did you arrive there?
A. About 6:00 o'clock.
Q. About 6:00 o'clock?
A. Yes, sir.
Q. All right.
A. He said be there at 6:00 or later.
Q. How long did you stay there?
A. I stayed there until almost 12:00.
Q. Until almost 12:00?
A. Yes, sir.
Q. On Wednesday where did you go?
A. Well, Wednesday morning I went back out to Rex's.
Q. How long did you stay out there Wednesday?
A. I stayed there until along about in the afternoon.
Q. Wednesday afternoon where were you, do you recall?
A. I went back over to the L&N station at 4:00 or 5:00 o'clock and stayed there two or three hours.
Q. Now, Mr. Grissom, since the work stoppage have you done any work for the L&N?

A. No, I haven't.

Q. You have never been called back for any work with the I.&N?

A. No, I haven't.

Q. And you have no seniority except in this hostler helpers' job?

A. That's all.

Q. What does a hostler helper do, the outside hostler helper, the job that you were performing, when this notice was given?

A. He assists the hostler in the movement of engines anywhere he might go.

Q. Anywhere he might go?

A. For instance we go to get an engine out of the roundhouse. I turn the table, line it up on the track, and we have a lock on the table. I put the lock in. Then I step over and give the signal to either head or back out, put him on the table. And then I turn it the way that it is supposed to go, line it up with the out bound track, put in the lock, and then go out and throw a derail off and give him a signal.

Then we move up. I watch the fuel and give signals, I check the fuel.

Q. Check what?

A. The fuel. Then when we go back to the table to move it over to another track, of course, all of those are locked, derailers have got to be put back. Then we go up another track, take the stand. Then we switch back to the table, and some derailers and locks are to be put in. Then we put him on the ready track.

And then we build the units, you see, from one to four, or cut them out, pull pins. We operate it, you see, cut them off.

And then we do transfer over to the Yard, and when I go to the Yard or main line I act as a fireman.

Q. When you go to the main line you act as a fireman, is that right?

A. Yes, sir.

Q. Now, in the Yard there is some of your work away from the engine and some on the engine?

A. Yes, sir.

Q. While you are in the Yard do you ride in the cab on occasion?

A. I ride in the cab after the herder takes over.

Q. After the herder takes over?

A. Yes, sir.

Q. You ride in the cab?

A. Yes, sir.

Q. Would you ride in the cab before that time?

A. No, there is some switches up there within the roundhouse limits there that I have to throw, and most of the time I just ride the footboard.

Q. You ride the footboard?

A. Yes, sir.

Q. Until you throw the switches?

A. Yes, sir.

Q. At one point there the herder begins throwing switches, when you are going into the main line?

A. Yes, sir, after we get to the Yard lead.

Q. Then it becomes the herder's duty to throw those switches?

A. Yes, sir.

Q. And you ride in the cab there then?

A. Yes, sir.

Q. When you are riding on the main line you perform the same duties as a fireman, is that right?

A. Same as a fireman.

Q. The movements that the hostler assisted by the hostler helper performs with the engine are in the Yard and on short runs, just transferring the engine around, is that right?

A. That's right.

Q. And switching the engine?

A. Yes, sir.

Q. What was your rate of pay at the time your job was abolished?

A. $14.96.

Q. $14.96 a day?

A. That's right.

Q. You were not paid anything after your last shift, Sunday, October 23, were you?

A. No, sir.

Q. Now, Mr. Grissom, in your movements that you have given there on the engine when you are helping the hostler, he moves on your signal, is that right?

A. That's right.

Q. And how many years service did you have with the Railroad?

A. 30 years and 23 days.

Q. 30 years and 23 days?

A. Yes, sir.

Q. When your shift was over there that morning did you have any—or that day, what time was it over?

A. 3:00.

Q. It was 3:00 o'clock, wasn't it?

A. 3:00.

Q. Did you have any of your property there on the L&N premises?

A. Yes, sir.

Q. What happened to that property then?

A. I packed it up in a little paper box and carried it out with me.

Q. You carried it out with you?

A. And put it in the trunk of my car.

Q. You didn't have any of your clothes or anything left there after that shift on the job?

A. No, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Smith:

Q. Mr. Grissom, when several of you got together Friday night at the Lodge over there and agreed to meet at Shorty Parker's house on Sunday afternoon, it was stated that that meeting would be to discuss the hostler helpers jobs, is that right?

A. Yes, sir.

Q. And did you agree to spread the word among other people to come to that meeting?

A. Yes, we said "If you see any of the fellows, tell them to come up."

Q. If you saw any of the fellows, tell them about it?

A. We were interested only in main line firemen, naturally. They are the only ones that know about the hostlers.

Q. I see. But the firemen would be the people interested in the hostler helpers jobs, wouldn't they?

A. Yes.

Q. I believe you said they were covered by the Fireman's agreement?

A. Yes, sir.

Q. Did you tell anybody to come to that meeting?
A. Yes, I did.
Q. Who did you tell?
A. I believe Mr. A. E. Hicks is the only one.
Q. Mr. Hicks?
A. That I invited.
Q. Did he come?
A. He was not there.
Q. Among the men that were there that you named, I don't know that I got all of them, I will ask you to tell me if Mr. Kennedy was there?
A. Yes, sir.
Q. Was he there?
A. Mr. Kennedy was there.
Q. You remember him?
A. I remember him.
Q. Do you remember Mr. Vann being there?
A. Yes, I do.
Q. Sir?
A. He was there.
Q. Mr. Fleming was there, you said?
A. Yes.
Q. Mr. Logan was there?
A. Mr. Logan was there.
Q. Mr. Edwards?
A. There was a conductor there that they said was Edwards.
Q. Sir?
A. There was a conductor there that they said his name was Edwards. I didn't know him.
Q. You were in here Monday when—
A. Yes, sir.
Q. —Mr. Edwards testified?
A. Yes, sir.
Q. That man was there, was he?

A. That was the man.

Q. When you got into that meeting somebody raised the question of the hostler helpers jobs being abolished, is that right?

A. Well—yes.

Q. Who brought that up?

A. Well, I don't know whether it was—Mr. Otts I believe.

Q. Mr. Otts?

A. Yes.

Q. And did he make any statement as to whether anything was being done about it?

A. Yes.

Q. What did he say was being done?

A. He told about the letter, and he read it, that he had from Mr. Paschal.

Q. The letter that he had from Mr. Paschal?

A. Saying they had violated the agreement and he would handle that, yes, sir.

Q. Did he have a letter from Mr. Paschal, you say?

A. Oh, yes. They had that at the regular meeting.

Q. Oh, he had that at the meeting on Friday night?

A. Well, he had it, spoke of the letter at that meeting.

Q. On that Friday night?

A. Yes, sir.

Q. I understood you to say earlier that there had been no mention made of the hostler helpers jobs at the Friday night meeting.

A. You mean up where?

Q. I understood a minute ago when Mr. Pettus was asking you some questions that you said the hostler helpers jobs were not mentioned at the Union meeting on Friday night.

A. Oh, they wasn't; the letter was read up there.

Q. The letter was read up there?

A. Yes.

Q. The letter related to the hostler helpers jobs?

A. You are right.

Q. You mean Mr. Otts got up and read a letter without making any comment at all about it?

A. No, Mr. Lloyd read the letter.

Q. Oh, Mr. Lloyd read the letter?

A. Yes, sir.

Q. Mr. Otts had the same letter at the Shorty Parker meeting?

A. No. I don't know that he read the letter. He spoke of it.

Q. He spoke of it?

A. Yes.

Q. Well, now, did you all discuss at the Parker meeting what to do about it?

A. Yes, we said we would use the proper procedure, and Article 42, the Firemen's agreement.

Q. All right.

A. Get together all the circumstances.

Q. You wanted to get together and agree to do something about it, didn't you?

A. Well, they knew the movements of the job, you see.

Q. Sir?

A. The hostlers know the movements of the job, or the firemen, they work them.

Q. Yes, sir, but I mean when you went to this meeting at Parker's house you went there and got together to do something about getting thos jobs restored, didn't you?

A. Well, about handling the case.

Q. What case?

A. Through the—this case of getting these jobs put back.

Q. That was the purpose of the meeting, wasn't it?

A. About getting pay for it, yes.

Q. You remember Mr. Kennedy being there, you say?

A. I do.

Q. And you recall that Mr. Kennedy gave some advice to the meeting, don't you?

A. Mr. Kennedy didn't say a word.

Q. Mr. Kennedy didn't say a word at the meeting?

A. He didn't say a word.

Q. You are sure of that?

A. I'm sure of it.

Q. That Mr. Kennedy didn't talk at that meeting?

A. No, he didn't talk.

Q. Now, Mr. Otts talked however, didn't he?

A. Yes, Mr. Otts had something to say.

Q. Did Mr. Southerland do any talking?

A. I don't know whther he did or not.

Q. Did Mr. Letchman do any talking?

A. I don't believe he did.

Q. You don't believe he did?

A. No, sir.

Q. Did Mr. Thomas do any talking?

A. Yes, but I don't remember what he said.

Q. Well, now, you remember nobody talking except Mr. Otts and Mr. Thomas?

A. McCutcheon had something to say.

Q. Sir?

A. Mr. McCutcheon had something to say.

Q. What did Mr. McCutcheon say?

A. He said it would take about 2 years to handle this case before the Labor Board, and he had an

extra job, that he could—he had three children, and he could get by, and he pointed over to me, and he says "Bill over there, he can draw his Unemployment." I said "That suits me," says, "I'll get by."

Q. Well, he said he had an extra job, didn't he?

A. Yes, sir.

Q. Mr. McCutcheon didn't make some remark about not wanting anybody to get in any trouble on account of his job?

A. No, I don't know anything about the trouble.

Q. Do you remember hearing him say something to that effect?

A. No.

Q. You don't remember that?

A. No, I did not, no, I don't know.

Q. Sir?

A. I didn't hear that.

Q. You didn't hear that?

A. No.

Q. You don't say he didn't make such a remark?

A. I wouldn't say it.

Q. All right, sir. Now, you were standing right by Mr. Kennedy, weren't you?

A. No.

Q. You were not?

A. No.

Q. Where were you standing?

A. I was standing by Mr. Thomas.

Q. With Mr. Thomas, excuse me?

A. Yes, sir.

Q. You say you were to get together and get some information, is that what the meeting was for?

A. Well, get together the circumstances to build a case and handle it.

Q. What circumstances?

A. Well, there's lots of them.

Q. What circumstances did you discuss there?

A. Well, there's one circumstance that down at the station they are paying firemen hostler helpers rates every day, and they are paying engineers firemen's rates every day. That's one of them.

Q. The men at that meeting knew that, didn't they?

A. Some of them didn't.

Q. Some of them didn't?

A. No.

Q. Who was going to hande this grievance, this case?

A. It would be handled by Mr. Otts here locally.

Q. Mr. Otts?

A. Yes, sir.

Q. Well, he knew that, didn't he?

A. Well, he could have known it.

Q. All right. You met to discuss the circumstances?

A. That's right.

Q. You yourself had handled grievances in the past, hadn't you?

A. Very few.

Q. You had handled grievances for other people, hadn't you?

A. Nothing more than a time claim maybe.

Q. How did you start a grievance?

A. Maybe it was turned down, and I didn't carry it any further.

Q. How did you start a grievance?

A. The way I started this on the time claim, I put up a claim for a day's pay on account of so and so.

Q. Yes, sir. At the time of that meeting you were familiar with that procedure, were you not?

A. Well, in a way. Of course, we—

Q. Haven't you testified, at the time of taking your deposition here, the pretrial deposition, that you had handled grievances yourself for other people?

A. No, I haven't, nothing only maybe they would ask me something about it.

Q. Well, they had asked you someting about it?

A. I don't have authority to handle them.

Q. I didn't ask you that. Didn't you tell the Commissioner when your deposition was taken that you had handled grievances yourself for other people?

A. I don't have that authority.

Q. I am not asking you that. I am asking you if you didn't testify under oath that you had?

A. I have had grievances, I mean cases maybe where there would be two or three, and I would get them to sign it and I would sign it.

Q. Let me ask you this, if this question or these questions were not asked you and these were not your answers? You have looked this deposition over before you came here, haven't you?

A. I looked over it a little, yes, sir.

Q. You reviewed your testimony, earlier testimony, have you not, sir?

A. Yes.

Q. This is the question:

"Q. And so the way that you would ordinarily handle this, that after you had missed a pay day you would go in and put in a time claim, wouldn't you?"

A. Yes, I would.

Q. And you answered:

"A. That's right."

A. That's right.

Q. Let me read these several questions and get your answers, please, sir:

"Q. And if the time claim would have been, if it would have been turned down, you would have taken that down and turned it over to your Local Chairman?

"A. That's right.

"Q. And you had handled it that way before, hadn't you?

"A. Yes, sir.

"Q. And most of the men had handled, or knew of the grievances being handled that way, hadn't they?

"A. Yes, sir.

"Q. And you had never had a meeting called before to handle any of your grievances or time claims before?

"A. I had never handled one before."

Now, just skipping one question. If they want to ask you that, they can:

"Q. You had handled time claims before, hadn't you?

"A. No, sir.

'Q. You had handled—

"A. Well, I had, I have handled different grievances before for somebody else.

"Q. You have handled different grievances before?

"A. Yes, sir."

Now, didn't you testify to that?

A. I did take up a case once for two other hostler helpers.

Q. Yes, sir, all right. They had changed jobs at the Yards before, hadn't they?

A. Who had?

Q. The Railroad; job changes had been made in the thirty some odd years you had been with the Railroad, had there not?

A. They made some job changes, yes.

Q. And on occasions there were grievances that came up on account of it, were there not?

A. Well, there were.

Q. Now, did you make a claim on account of your job here?

A. Yes, I made a claim on the 24th.

Q. You made a claim?

A. Yes, sir.

Q. After this strike was over?

A. After it was over.

Q. You put it in and let it go in through Mr. Otts, and it went on up, is that right?

A. That's right.

Q. Is that claim still pending?

A. Sure.

Q. And if you are entitled to be paid for that time you lost you will get it, is that right?

A. The whole time.

Q. Yes, sir, that's right.

A. Yes, sir.

Q If you are not entitled to it you won't, is that right, sir?

A. Yes, I won't.

Q. That is according to the agreement, is it not?

A. That's it.

Q. Now, at that meeting there was a discussion about what would be a better way to go at getting those jobs restored than taking it up through channels, wasn't it. Mr. Grissom?

A. I didn't hear it.

Q. You say you didn't hear it?

A. I didn't hear any discussion.

Q. You didn't hear any discussion of any other method except taking it through channels?

A. I hadn't.

Q. How long did the meeting last?

A. 30 minutes.

Q. About 30 minutes?

A. Yes, about 30 minutes.

Q. You were there the whole time?

A. I was there the whole time.

Q. And you don't recall anybody making any statement about any other method of handling the grievance other than taking it up through channels?

A No.

Q. That you have just told us about?

A. No, I didn't hear anything about it.

Q. You don't remember anybody in the meeting advising that it would be unwise to try any other method of getting those jobs restored?

A. Did not.

Q. You don't recall that?

A. I don't recall it.

Q. You do recall that Mr. T. A Kennedy didn't say anything at that meeting?

A He didn't say anything.

Q. He didn't say a word?

A. No.

Q. Were you near enough to Mr. Kennedy to hear Mr. Kennedy if he had talked?

A. I think so.

Q. Yes, sir, all right. You say you went home from that meeting and stayed at home until after supper?

A. Yes, sir.

Q. Then that night you went down to the L&N station?

A. I went to North Birmingham between 8:00 and 9:00 o'clock, a little after 8:00.

Q. You mean to take your cook or maid home?

A. That's right.

Q. Yes, sir. And when you got back to the house, you went back to the house first, didn't you?

A. Yes.

Q. Where do you live now?

A. 5332 5th Terrace South.

Q. You left your house and came downtown to the L&N station?

A. Well, not right immediately. I locked up my car and went in the house.

Q. After you did that—

A. I stayed a while.

Q. After you left the house where did you go?

A. I went down to the L&N station.

Q. Now you went in the L&N station, parked your car by the Superintendent's Office, and walked up under the shed you tell us?

A. That's right.

Q. Did you have any business down there at that hour of night?

A. I had heard a rumor.

Q. You had heard a rumor?

A. Yes, sir.

Q. Of what?

A. Some trouble.

Q. Did you hear the rumor was dow" at the L&N station?

A. They said on the L&N.

Q. They said on the L&N?

A. Yes, sir.

Q. You didn't go out to the Yard and check it out there, did you?

A. No, that was the nearest point.

Q. Your duties required you to report at the Yards, didn't they?

A. Roundhouse.

Q. At the roundhouse?

A. Yes, sir.

Q. Your duties were not down at the station, were they?

A. Yes, my duties was there too.

Q. You mean you reported for work at the L&N station?

A. Anywhere in the Terminal when I was working.

Q. It came as a surprise to you then that there was trouble?

A. It did.

Q. You had no idea of that?

A. No. I didn't.

Q. You went down there around 9:00 o'clock at night to the L&N station?

A. That's right.

Q. You found no one there and went back to Rex's Barbecue then?

A. That's right.

Q. You told Mr. Pettus you stayed up all that night?

A. I sure did.

Q. Until 6:00 or 7:00 o'clock in the morning?

A. You are right.

Q. You had worked that previous day from 7:00 o'clock in the morning, hadn't you?

A. I had.

Q. You had been up 24 hours by the time you left there that morning?

A. 24 hours.

Q. Sir?

A. That's right, about that.

Q. How old a man are you, Mr. Grissom?

A. 58.

Q. Did anybody tell you to stay there that length of time?

A. No, I was acting on my own.

Q. Acting on your own?

A. Yes.

Q. You wanted to help any way you could to carry out what you all had planned to do, didn't you?

A. Well—

Q. Sir?

A. No.

Q. You didn't want to help them?

A. Not on that.

Q. You didn't want to do anything, to have anything to do with any picketing, did you?

A. Pickets?

Q. Yes, sir.

A. I haven't seen any pickets.

Q. You never have seen any pickets?

A. No.

Q. You were standing there from midnight until 6:30 in the morning, but you were not picketing, is that what you tell us?

A. That's right.

Q. You were over by the gate opposite the Rex's Barbecue, weren't you?

A. At times I would walk over.
Q. You would walk over there?
A. Yes.
Q. Is that a different gate from the little footbridge gate?
A. There is two gates there.
Q. Yes. sir.
A. One was a footbridge.
Q There are two gates near Rex's Barbecue?
A. Yes, one is for automobiles, and the other one is a walkway, out to Rex's.
Q. Were people gathered at both those gates?
A. Yes, there were people there.
Q. They stood there all night?
A. Yes.
Q. And you stayed there with them?
A. Not over there. I stayed around there.
Q. You stayed in that area all night?
A. Yes.
Q You say nobody asked you to?
A. No.
Q. Nobody invited you to?
A. No.
Q. Now the next morning a shift came on at 7:00 o'clock, didn't it?
A. That's right.
Q. Men usually come in a little earlier, at 6:30 or 7:00, don't they?
A. That's the way they usually do.
Q. That morning some men came to work, didn't they?
A. You mean on Monday?
Q. Yes, sir.
A. I was at home in bed.

Q. You were there you say until 6:30 or 7:00 o'clock?

A. Oh, yes.

Q. Weren't you there until 6:30 or 7:00 o'clock?

A. I was there at 6:30, yes.

Q. Before you left some men had come in there to go to work?

A. Yes, sir.

Q. They had come up to the gate, hadn't they?

A. Yes, sir.

Q. And you saw those men come up to the gate and turn away and go back, didn't you?

A. No. This man didn't go up to the gate. I was on the front of the Coffee Shop there, about that post there, when he came up, near the highway.

Q. Which one?

A. Well, the one—you said there was men come up there, didn't you?

Q. Well, you saw people come up to the gate and turn away, didn't you?

A. No, they didn't go up to the gate.

Q. You never did see anybody go up to that gate that morning?

A. No.

Q. What about this man you are telling us about, who is that?

A. Mr. Red Wood.

Q. Mr. Wood?

A. Yes.

Q. What did Mr. Wood do?

A. He walked up and spoke to me.

Q. All right, sir. And then he didn't go in, did he?

A. He was there, that was his off day, Monday.

Q. Oh, that was his off day?

A. Yes.

Q. Where were you standing when you talked to Mr. Wood?

A. Standing, oh, you might say in front of Rex's, over near the highway there.

Q. Now, Mr. Wood hadn't been there all night, had he?

A. No, he just came up.

Q. And he had on his work clothes?

A. No, I don't think he had on his work clothes.

Q. You don't remember whether he had on his work clothes or not?

A. No.

Q. He had on his street clothes?

A. I believe he had on a jacket.

Q. All right. And he was due to go on that shift in the morning, wasn't he?

A. That was his off day.

Q. Wasn't he on the 7:00 o'clock shift?

A. That was his off day.

Q. Sir?

A. That was on Monday, that was his off day.

Q. Well, didn't he work the 7:00 o'clock shift, even if that was his off day?

A. Yes, sir.

Q. He was down there at 6:30 or earlier, on his off day?

A. Yes, sir.

Q. At the gate is that right?

A. He was on the south side of the highway.

Q. Now, Mr. Grissom, you went back to the station, you went to the L&N station, did you tell us, Tuesday night?

A. Tuesday at 6:00 o'clock.

Q. You didn't go down to the L&N station on Monday night?

A. Monday night?

Q. Yes, sir.

A. No, I wasn't down there on Monday night.

Q. Monday you got up around noon and went down to Rex's and stayed there from noon until 9:00 o'clock, is that what you told us a minute ago? Did you get there around 1:00 o'clock?

A. On Monday?

Q. Yes, sir.

A. Something like that. I know I slept that morning.

Q. Yes, sir, you went to sleep, and got up and came back down?

A. I got up and came back down.

Q. You stayed down there all that day?

A. Yes.

Q. Until midnight that night?

A. Yes.

Q. And Tuesday you went down to Rex's Barbecue and stayed all day, didn't you?

A. No, I didn't. I went out there that morning.

Q. Stayed all morning?

A. Yes.

Q. All right.

A. And part of the afternoon.

Q. A while in the afternoon?

A. Part of it.

Q. And all that time you were over by these gates, were you not?

A. Well—

Q. You were in the crowd of men around these gates?

A. There was crowds over there.

Q. Yes, sir.

A. Maybe I would step over and talk with them, and go back.

Q. There was a lot of whittling going on over there, wasn't there?

A. Yes, sir.

Q. A lot of the fellows had big hunks of cedar that they were whittling on?

A. They didn't whittle on the big hunks. They might bring out a big hunk and split it off.

Q. Some of those sticks were pretty good size, weren't they, Mr. Grissom?

A. No, what they whittled on is very small.

Q. Didn't you see some of them as big as a man's leg?

A. They wouldn't hold that up to whittle.

Q. Sir?

A. They wouldn't hold that in their hand to whittle.

Q. I am not talking about that, they had some pieces that big, didn't they?

A. They keep them in the cupboard, they have big pieces in the cupboard.

Q. They had them there when the whittling was going on, didn't they?

A. I don't recall any big rails or anything like that around there.

Q. No, sir, I am asking you, these big pieces that they cut the smaller pieces off of, they had some of them there, didn't they?

A. Well, they keep those in the cupboard.

Q. In the what?

A. In their cupboard, where they keep their clothes.

Q. You mean inside of the Yard?

A. Yes.

Q. Well, nobody went inside of the Yard and got cedars, did they?

A. They brought it out with them.

Q. When they came out the night before?

A. They carry it in their hip pocket, carry extra little pieces, see.

Q. Where did the big pieces come from?

A. They come from the rails they saw up.

Q. You mean laying out there by the gate right now, and were at that time, just laying around there on the ground?

A. No, they don't lay them around.

Q. Where did they come from?

A. Some of it come from Tennessee, in the country up there. I went up there in February and brought some back myself.

Q. Yes, sir.

The Court:

What did you use it for, just to whittle?

The Witness:

To whittle.

Q. Well, Mr. Grissom, now you went back down to Morris Avenue on Tuesday around 6:00 o'clock?

A. That's right.

Q. Did you talk to anybody down there during that time?

A. Yes, I talked to an old drunk. He was sitting under the shed there. He come out about every 30 minutes to get him a drink, and start a conversation.

Q. Where were you standing?

A. I was standing over about the meter there on the corner.

Q. On the corner of Morris Avenue and 20th?

A. Morris and 20th.

Q. You didn't go up under the shed?

A. No.

Q. You stayed there on the corner?

A. I stayed there on the corner, yes.

Q. All right, sir. Now, you stayed there from 6:00 o'clock until midnight, you say?

A. Around midnight.

Q. And except for that drunk did you see anybody or talk to anybody?

A. Well, there was people going in there, but I didn't have anything to say to them, I didn't know who they were. I believe Mr. Camp came up there. That was on Wednesday night.

Q. No, I am talking about Tuesday night now.

A. All right.

Q. Now, you have said you were waiting on a fellow named "Slim"?

A. That's right.

Q. You can't tell us any more about Mr. Slim, can you?

A. Well, he was going to bring me a letter. He said he thought he had one.

Q. That he had one?

A. But he didn't come around.

Q. And he told you that he was going to bring you a letter at Morris Avenue and 20th Street at what time?

A. 6:00 or after.

Q 6:00 or after?

A. Yes.

Q. Did he tell you he might be as late as midnight?

A. Well, he didn't say it would be that late, he said 6:00 or after.

Q. 6:00 or after?

A. That's right.

Q. After you had waited an hour did you make any effort to call him or anything?

A. I didn't know where to call him.

Q. You just stayed there for six hours waiting on "Slim"?

A. Yes.

Q. Did you go down there on Wednesday night and wait for him some more?

A. Sure did.

Q. He didn't tell you he would see you on Wednesday, did he?

A. He didn't say.

Q. He didn't say anything about that, but you just went down there on Wednesday?

A. I went down there to see.

Q. You mentioned a little earlier that you had no seniority for any job except as hostler helper?

A. That's right.

Q. Seniority is a matter of Union jurisdiction, isn't it?

A. That's a—Yes.

Q. In other words, under the Union rules there was no job you could fall back to, is that right?

A. That's right.

Q. Nobody at the L&N told you that you couldn't work on any other job; it was a Union matter, wasn't it?

A. The Company and the Union.

Q. Nobody at the L&N has told you that the Company would not otherwise be willing to give you a job, has there?

A. Well—

Q. They gave Mr. McCutcheon another job, didn't they?

A. They said I was terminated.

Q. You told us you couldn't go back to any other job?

A. That's right.

Q. That is because of the Union rules, isn't it?

A. That's right.

Q. Now, Mr. Grissom, you have been around here, you have been out to the Yards from time to time in the last year since this all happened, haven't you?

A. Oh, yes.

Q. These engines are still operating out there all right, aren't they? The herders have taken care of it, haven't they?

A. There is a difference in the operation.

Q. There is a difference, but they still operate the engines, don't they?

A. They still operate them.

Mr. Smith:

I believe that's all.

Re-Direct Examination.

By Mr. Pettus:

Q. The way they are operating now is dangerous, isn't it?

Mr. Simpson:

We object to that.

The Court:

I sustain the objection.

Mr. Pettus:

He asked if they were operating all right. We offer to show it is not all right. That is in response to his question.

The Court:

You will be permitted to show why they were not operating all right. I don't think you could reach the ultimate conclusion that it is dangerous.

Mr. Pettus:

All right.

Q. Just tell us how they are operating now, Mr. Grissom.

A. Well, they have put a laborer helping the outside hostler. And say for instance they have an outside move, it was my job to work that engine up, coal,—I mean fuel. sand, and see that it was supplied, and then go to the Yard. They are having a laborer work this engine up, get the fuel, sand, and see about supplies, and then they won't let him go to the Yard. They will send this hostler a half mile by himself, where he meets the herder, and the herder takes over and rides the footboard on the right side, no one on the left side And he delivers this engine, swaps, then carries one back to the shop. And then when he gets back to the shop the laborer, he takes over, and it's the work that I did for 30 years.

Q. When the hostler is riding on the right side of the engine, he can't see off of the left hand side of that engine, can he?

A. No.

Q. This man that you say that you saw on Monday, Red Wood, what craft is he in?

A. He is a machinist.

Q. He is a machinist?

A. Yes, sir.

Q. This letter that Mr. Smith asked you about that you were waiting for from "Slim", can you tell us something about what you expected out of that letter?

Mr. Simpson:
We object to that. That is an undisclosed state of mind, if the Court please.

The Court:
I sustain the objection.

Mr. Pettus:
We except and offer to show that it was.

The Court:
I sustain the objection.

Q. Now, Mr. Grissom, did you yourself, or did you authorize anybody to cause, on October 23, 1955, cause other employees of the Railroad Company, the Plaintiff, by means of intimidation or threats of force or violence, not to perform their duties with the Plaintiff?

Mr. Simpson:
We object to that as a conclusion of the witness.

A. I did not.

Mr. Simpson:
Invades the province of the jury and is a conclusion of the witness.

The Court:
It is not in rebuttal. I sustain the objection.

Mr. Pettus:

We except and offer to show that he has not. That's all.

Re-Cross Examination.

By Mr. Smith:

Q. The only time laborers have anything to do with those engines is in the roundhouse area, isn't it?

A. Sir?

Q. In the roundhouse itself is the only time laborers service those engines, isn't it?

A. In the roundhouse?

Q. Yes, they don't take them out in the switching service or out on the main line?

A. They have to take them out in the Yard to get fuel and sand.

Q. Sir?

A. They have to take them out in the Yard to get fuel and sand.

Q. They don't take them out and operate the switching duties, do they?

A. Yes, they operate them.

Q. They do?

A. Build four units.

Q. Laborers do that?

A. Yes.

Q. They ride on it all the time the engine is switching, is that right?

A. That was my job.

Q. Outside, do laborers go outside?

A. They can.

Q. I am not asking you that. You told us what they do, and I am asking you if they do.

A. The inside, there is two hostlers. If he goes out, they go.

Q. I am not talking about the inside hostlers, but about the outside hostlers. That is the only thing that was affected?

A. It has never been customary for a laborer to work with an outside hostler.

Q. Laborers don't do anything outside, do they? They don't get on the engine and ride outside, do they?

A. Well, they use them for that.

Q. Sir?

A. They use them for that sometimes in case we are sick.

Q. Oh, you mean back before this all came up?

A. Yes, sir.

Mr. Smith:
All right, that's all.

The Court:
Come down.

Mr. Pettus:
That's all.

(Witness excused.)

The Court:
Your next witness.

Mr. Pettus:
Mr. Pennington.

W. F. PENNINGTON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. William Fred Pennington.

Q. Where do you live?

A. 3616 North 41st Street.

Q. Who do you work for?

A. L&N Railroad.

Q. What is your job?

A. Switch Foreman.

Q. Are you a member of a labor organization?

A. Yes, sir.

Q. What organization is that?

A. Brotherhood of BRT.

Q. BofRT?

A. Yes, sir.

Q. Does that mean Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. Is that a different organization from the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. How many railroad men belong to the Brotherhood of Railroad Trainmen here in Birmingham, with the L&N?

A. Well, I couldn't answer that right offhanded, I would say there is between four and five hundred switchmen and I would say all of them other than—I wouldn't think there would be over twenty that didn't belong.

Q. It would be from four hundred to almost five hundred people?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. You are one of the Defendants in this case, aren't you?

A. Yes, sir.

Q. Are you the only switchman that is a Defendant?

A. Yes, sir.

Q. On October 23, 1955 were you working for the Railroad that day?

A. Yes, sir.

Q. What time did you go on duty?

A. 2:45 p. m.

Q. What was your job?

A. Yard Foreman on assignment No. 20.

Q. Where was that job performed?

A At the south end of the BM Yard.

Q. Was it a Yard job?

A. Yes, sir.

Q. You stayed in the Yard during the whole time, is that right?

A. I think so, my crew.

Q. Who else was on the crew with you?

A. I had a man in the long field. I believe it was A. C. Devers, and S. Norris following the engine. Ed Weldon was the engineer, I believe, and C. A. Myrick was fireman. I am not too sure about Myrick, whether he was or not, because he stays on the—there is two jobs that go to work down there, and I don't know particularly that he was on that job, but I think he was.

Q. In other words, you don't recall particularly that day whether he was there or not?

A. No, sir.

Q. But you think he was there?

A. No, sir, I sure don't.

Q. Now, did you work on that job until after dark that day?

A. Yes, sir.

Q. Did anything occur later that evening?

A. Yes, sir.

Q. What occurred?

A. Well, the men in general were all talking about this labor trouble, about the hostler helpers had been pulled off. Just everybody was talking about it.

Q. Did anything happen along between 8:00 and 9:00 or 10:00 o'clock that night on the job?

A. Yes, sir, about 9:00 o'clock there was somebody hollered "Labor trouble", and everybody begun to leave the Yard.

Q. Do you know who hollered "Labor trouble"?

A. No, sir, I don't.

Q. Where were you at the time you first heard that cry?

A. I was on the lead.

Q. You were on the lead?

A. Yes, sir.

Q. And with reference to the roundhouse, how far were you away from it?

A. I would say I was almost a mile from the roundhouse.

Q. Almost a mile?

A. Probably a mile.

Q. Where you were there were tracks all around you?

A. Yes, sir.

Q. Was it dark?

A. Yes, sir.

Q. Are there any lights on the Yard out there where you were?

A. There is supposed to be. There are lights out there, but about three-quarters or maybe more of the time they don't burn.

Q. Do you recall whether or not they were burning that night?

A. I don't recall whether they were or not, I just don't know. I don't much think they were.

Q. From what direction did this call of "Labor trouble" come?

A. Well, we have a place there where we parked our cars, and it was back out towards where our cars were, out in front of the office, kind of. I was to the side of the office, out to the side of the office.

Q. Could you see the person that called out?

A. I could see somebody, but I didn't know, I couldn't say whoever it was. I seen somebody out towards the cars. I don't know that—I couldn't say that they was the ones that said it. I just heard that, I don't know who said it or anything about it.

Q. Did you recognize the voice?

A. No, sir, I didn't.

Q. That called out?

A. No, sir, I didn't.

Q. What did you do and what did your crew do after you heard that call?

A. My two helpers started walking off, and I was talking, and I caught up with them and asked them where they were going and they said they were going home. I went to the Yardmaster, and that was Mr. Downey, R. B. Downey, and I told him me being the foreman on the job, I didn't know what to do, and he

said well he couldn't tell me what to do. And I told him, well, I says "I am going down to the main office and talk to Mr. Roy, the General Yardmaster, and me being foreman on the job, I don't want to just walk off and quit." And I did, I went to the main office.

Q. How far was the main office from there?

A. About a half a mile I would say.

Q. And do you know about what time you arrived at the main office?

A. I would say I got there about 9:10 or 15.

Q. What did you see when you got there?

A. There was a big bunch of men around the Yard Office.

Q. Were they all crafts?

A. Yes, sir.

Q. Did you see anything in the Yard Office?

A. I went in the General Yardmaster's Office and was talking, I just asked Mr. Roy what was going on, and he said he didn't know, and about that time the telephone rang, and he went to talking to somebody, and I stood there for a few minutes. I seen Mr. Mitchell. I was looking right through the end of what they call the General Office, where all the clerks and all were. I seen Mr. Mitchell on the inside of the other office.

Q. About how far away were you from Mr. Mitchell?

A. I was about as far away as from here to the back of this room.

Q. Was the room lighted there where you could see him?

A. Yes, sir.

Q. You know Mr. Mitchell?

A. Yes, sir.

Q. You know Mr. Roy?

A. Yes, sir.

Q. And did you see Mr. Mitchell doing anything then?

A. Well, Mr. Roy was still talking on the telephone, and he was talking about some cars, I took it to be railroad cars, and I just turned and walked out. I walked to the window, and the window was up right where Mr. Roy was talking, and I was looking through the screen, and I seen Mr. Mitchell either turn off an electric fan or light, I would say that it was the light, when he pulled the chain, or something, I would say he was turning out the lights.

Q. Did he stay there, or could you still see him or what happened to him there then?

A. Well, I walked on out in the crowd, and Mr. Mitchell came out, the lights went out after I got on around the side of the Yard Office and Mr. Mitchell came out of the Yard Office.

Q. After you had seen him did you walk straight on out then?

A. Yes, sir.

Q. And you met him?

A. Yes, sir.

Q. And he had walked out himself, is that right?

A. Yes, sir, he said "Boys, let's go."

Q. What's that?

A. Mr. Mitchell called out and said "Let's go."

Q. You went with him, did you?

A. Yes, sir.

Q. Where did you go?

A. I went down to Rex's Barbecue, had a sandwich, and stayed, I don't know just how long I stayed, not too very long, and went home.

Q. Were you in work clothes?

A. Yes, sir.

Q. You don't recall the hour that you went home, is that right?

A. No, sir, I sure don't. I might have stayed there an hour or an hour and a half, I just don't know how long I stayed.

Q. Now on Monday, what did you do, Mr. Pennington?

A. Well, Monday morning I carried the kid to school, went down to the main gate and stayed a while back to the house and stayed a while.

Q. Did you make any telephone calls?

A. Yes, sir, I made one Monday afternoon, or along a little after lunch, right after lunch.

Q. Who did you call?

A. I called Decatur, Alabama.

Q. And who did you talk to there?

A. I don't know who I talked to. I called the operator and asked for information, for Jack Coley of Decatur, and she looked and said she didn't have a number listed for Jack Coley, and I asked her to transfer the call to the L&N Yard Office in Decatur.

Q. Did you talk to somebody at the L&N Yard Office?

A. Yes, sir, I did.

Q. What was your conversation, just state what was your conversation?

A. I guess I told him who I was, I don't remember, I'm pretty sure I did, and I told him I was a switchman, I would like to talk to Mr. Coley, if he knew how I could get hold of him. He said that was Mr. Coley's off day, and he didn't know how to get in touch with him.

Q. In that conversation did you mention anything about whether there was a work stoppage on Monday in Birmingham so far as you knew?

A. Yes, sir.

Q. Did you discuss that work stoppage with the man?

A. I did not.

Q. You did not?

A. No.

Q. Then after this conversation with this man, what did you do?

A. Well, I was down at the gate that morning. I had talked to Mr. Bentley, and I had planned to go fishing.

Mr. Simpson:

I object to his plans, undisclosed state of mind, may it please the Court.

The Court:

I sustain the objection That is excluded.

Q. Well, did you see Bentley later that day?

A. Yes, sir.

Q Did you see anybody else later that day?

A. Yes, sir.

Q. Who was the other man?

A. Bruce Barnett.

Q. Did you stay in Birmingham or go somewhere?

A. I went to Decatur.

Q. You went to Decatur?

A. Yes, sir.

Q. Tell us what you did when you got to Decatur.

A. I went to the place where Jack Coley had lived, and found it vacant, and went back to the car. I looked into the window, and there wasn't any shades or curtains or any furniture or anything. And we went

from there to the Yard Office to see if somebody might know where I could find him.

Q. Is Jack Coley a man that you knew in Decatur?

Mr. Simpson:

We object to that as leading and suggestive.

A. Yes, sir.

The Court:

Overruled.

Q. Do you know any other Coley?

A. Yes, sir.

Q. Where?

A. Birmingham.

Q. Had you had any conversation with the other Coley that day?

A. I had, down at the main gate that morning.

Q. Now, when you went down there you say you went down to the Yard Office at Decatur?

A. Yes, sir.

Q. Did you see anybody there?

A. Yes, sir.

Q. Who did you see?

A. Well, there was a good many people there. I didn't see anybody that I know other than Mr. Toone.

Q. Mr. Toone, who is he?

A. He is a Special Agent for the L&N.

Q. Where was he when you saw him?

A. He was inside of the Yard Office.

Q. Was he armed at that time?

A. Yes, sir.

Q. Did you have any conversation with Mr. Toone?

A. Yes, sir, I did.

Q. Will you repeat that conversation?

A. I asked Mr. Toone how he was getting along, and I think I shook hands with him, that's about all, standing there talking to him, just, I don't know what all we was talking about, about how long it had been since we had seen one another.

Q. Did you have any conversation with anyone else there?

A. I asked if any of them knew where to find Jack Coley, and somebody told me that they didn't know where he might be found, that it was his off day.

Q. Now, you have seen these witnesses here that have testified in the case from Decatur?

A. Yes, sir.

Q. Do you recall talking to any of them, Mr. LeCroix, and one or two others?

A I didn't know any of them.

Q. You didn't know any of them by name?

A. No, sir.

Q. Did you have any conversation with anybody in the Yard Office with reference to the work stoppage in Birmingham?

A. I don't know whether I did, or who did. Some of the crowd did.

Q. Who was in the crowd with you?

A. Me, J. O. Bentley, and Bruce Barnett.

Q. The work stoppage was mentioned?

A. Yes, sir.

Q. And will you tell the jury, please, what the discussion was, and if you know who said it, say who the man speaking was?

A. I don't know who they were that was talking there, but they asked what was going on in Birmingham, and the fellows told them that there was a work stoppage in Birmingham, and they said "How do we know it is?" And some of them said, told them, 'Well, we've got a newspaper." They said was there any picket lines in Birmingham. I told them no, I says "There is not any picket lines out." They wanted to know what kind of labor troubles it was, and I said "All I know is what I have seen in the paper, and what I have heard before the strike." And somebody gave them a newspaper and they looked at it.

Q. Was the newspaper given to them by either Bentley or Barnett or yourself?

A. Yes, sir, one of us did, and I don't know who did it.

Q. Was there any further discussion there at the Yard Office that you recall?

A. Yes, sir.

Q. Just tell what it was.

A. Some one of the men wanted to know if we could—they said they was ready to come out, and said, asked us if we would go to the freight house and show it to the men up there. And we went to the freight house.

Q. They said show what to the men at the freight house, if anything? What did they say to show to them?

A. The newspaper.

Q. Did you go to the freight house?

A. Yes, sir.

Q. Who was with you when you went to the freight house?

A. Bruce Barnett and J. O. Bentley.

Q. Did you see anyone at the freight house?
A. Yes, sir.
Q. Do you recall who you saw there?
A. Yes, sir, one man.
Q. Who?
A. Mr. Toone.
Q. Was he down there at the freight house when you arrived?
A. Yes, sir.
Q. Did you have any conversation with him there?
A. Not that I remember.
Q. Did you have any conversation with anybody else at the freight house?
A. Well, nothing only just showing them the paper, and they was asking about the work stoppage.
Q. And did Bentley or Barnett have any conversation there that you recall?
A. Not that I heard other than just around that paper.
Q. How long did you stay at the freight house?
A. I would say about five minutes.
Q. About five minutes?
A. Yes, sir.
Q. Did anybody at the freight house have any remarks about the work stoppage?
A. Well, they all seemed like they was ready to quit anyhow.

Mr. Simpson:
We object to what they seemed like.

The Court:
I sustain the objection.

Q. Did anyone express themselves there, did anyone express themselves there, say anything?

A. Yes, they said, some of them said "Well, I'm ready to go home, that's good enough for me." They said 'They're not working in Birmingham, we shouldn't be working here."

Q. Was the paper shown at the freight house?

A. Yes, sir.

Q. The newspaper?

A. Yes, sir.

Q. Then after that remark was made did you stay around the freight house?

A. No, sir, I left.

Q. And did Bentley and Barnett leave with you?

A. Yes, sir.

Q. Was Mr. Toone there at the freight house all the time that the conversation was going on?

A. Yes, sir, he sure was.

Q. Now, Mr. Pennington, how much is your daily pay with the L&N?

A. Well, it's different. If I work a foreman's job, I hold foreman's age. I think a switchman—I'm on a foreman's job now, $19.82 I believe.

Q. $19.82?

A. Yes, sir.

Q. As a switchman, what do you earn?

A. $18.55 I think.

Q. $18.55?

A. I am not too sure about that.

Q. You haven't been paid for these days that the Railroad wasn't working during the work stoppage, have you?

A. No, sir.

Q. Now, in the complaint here they charge that you conspired, combined, conspired or combined to interfere with the Plaintiff's business, and that pursuant to that conspiracy or combination you intentionally, and without just cause, interfered with and prevented Plaintiff from carrying on said business, in that you caused other employees of Plaintiff, by means of intimidation or threats of force or violence not to perform their duties that day. Did you do any of those acts?

Mr. Simpson:
We object to that as a conclusion of the witness.

The Court:
That calls for a conclusion.

A. I did not.

The Court:
That is one of the main things we are trying, that is the main thing that we are trying with the jury here.

Mr. Pettus:
We except.

Q. Now, Mr. Pennington, is that the deposition that the Railroad lawyers took from you on November 29, 1955, or a copy of it? (Indicating) In other words, you can glance at that. Is that your testimony there?
A. Yes, sir.
Q. Now, that was in 1955, is that right?
A. Yes, sir.
Q. On November 29?

A. Yes, sir.

Q. Now, on February 10, 1956 did the L&N Railroad Company write you that letter (indicating)?

A. Yes, sir.

Mr. Pettus:

We offer this letter in evidence.

Mr. Simpson:

Let me see it just a minute.

Mr. Gibson:

I would like to see it.

Mr. Simpson:

We object to this, as immaterial. We object to it as being immaterial.

(Defendants' Exhibit No. 4 was marked for identification.)

The Court:

Well, I sustain the objection. I don't believe the letter is material.

Mr. Pettus:

We except.

Q. Now, Mr. Pennington, have you gotten a promotion since this work stoppage?

Mr. Gibson:

We object to that.

A. I have in one way; and in one way I have not.

The Court:
I sustain the objection.

Mr. Pettus:
We except.

Mr. Smith:
And move to exclude the answer.

The Court:
That is excluded, gentlemen.

Mr. Pettus:
That's all.

Cross Examination:

By Mr. Simpson:
Q. Mr. Pennington, you are what age?
A. 31.
Q. Are you a strong, able-bodied man?
A. Well, I wouldn't say I'm too strong.
Q. Well, you are not sick in any way, are you?
A. I don't feel so good today.
Q. What do you weigh?
A. I weigh 152. I weighed this morning.
Q. In general is your health good?
A. Yes, sir.
Q. Was it in October, of last year?
A. I would say so.
Q. You told us that you hadn't heard anything about any work stoppage or labor trouble out there, but that you had been hearing, I believe you say, it being talked around the Yards, about labor trouble all day?

A. Yes, sir.

Q. That you were working out there that afternoon, on Sunday the 23rd of October?

A. Yes, sir.

Q. In that deposition that Mr. Pettus showed you there, that you made about a month after this thing occurred, were you asked these questions and did you make these answers?

Mr. Pettus:

Will you tell me what you are reading from?

Mr. Simpson:

Page 18, at the top. Question "Had anybody told you there would be labor trouble that day?", and did you answer "No, sir."

"Q. Had you heard anybody say there would be labor trouble that night?

"A. No, sir.

"Q. You knew nothing about any walkout coming, or being planned?

"A. No, sir.

"Q. Or being expected?

"A. No, sir."

Did you make those answers?

A. I probably did.

Q. You probably did. All right.

Now turn to page 17 there, Mr. Pettus.

"Q. You told us that the thing that caused you to come out of there that night was somebody hollered 'Labor trouble'?

"A. That's right.
"Q. Was that all that they hollered?
"A. Labor trouble, get out of the Yard.
"Q. Get out of the Yard.
"A. Yes, sir."

Q. Well, you forgot that a while ago, didn't you, that "Get out of the Yard" part?
A. I don't know whether I stated that or not.
Q. Oh, you just omitted that a while ago, but that was what was said, wasn't it?

Mr. Pettus:
We object to that as argumentative.

The Court:
I sustain the objection.

Q. That was what was said that night, wasn't it?

Mr. Pettus:
We object.

The Court:
I overrule the objection.

Q. "Get out of the Yard", wasn't it, "Get out of the Yard" was hollered at you, wasn't it?
A. Somebody hollered "Labor trouble, get out of the Yard."
Q. "Get out of the Yard." Now, that "Get out of the Yard" is what took you out, wasn't it?
A. Not necessarily.
Q. Not necessarily?
A. Labor trouble took me out of the Yard.

Q. What?

A. Labor trouble took me out of the Yard.

Q. I say they hollered "Labor trouble, get out of the Yard"?

A. Yes, sir.

Q. That's what you told in this examination that they hollered, didn't you?

A. Yes, sir.

Mr. Simpson:

All right. All right, sir. I'm trying to save a lot of time, Your Honor, and just ask him the material things here that I want to ask him about.

Q. Your crew said they were afraid to stay in there, didn't they, Mr. Pennington?

A. No, sir.

Q. What?

A. They did not.

Q. They did not?

A. If they did I didn't hear them.

Q. I will ask you if on that same examination about a month after this thing happened you were asked these questions and made these answers, "How far from you at the time you saw them—how far from you at the time you saw them walk off?" Referring to the members of your crew.

Mr. Pettus:

What page is that?

Mr. Simpson:

That is page 22. I beg your pardon.

"A. Close enough to talk to, talking distance.
"Q. Did you talk to them?
"A. Yes, sir.
"Q. What did you say to them?
"A. I asked them if they were going to leave, and they said yes, that they were afraid to stay."

Did you make those answers, did your crew tell you that night that they were afraid to stay?

A. I don't remember them telling me they was afraid to stay.
Q. If you testified that a month after this thing happened, it was fresher in your mind then that it is now, wasn't it?
A. It could have been.
Q. Will you say you did make that answer at that time?
A. I don't know.
Q. Do you want to look at your record here and see?
A. I probably made it.
Q. You probably made it. All right. What is your statement now to the jury?
A. I don't remember of them, hearing them say they were afraid to stay.
Q. If you told this at that time it was fresher in your recollection, and you, would you say that this was probably true, wouldn't you?
A. It could be.
Q. All right now, were you scared?
A. No, sir.
Q. You were not scared at all?
A. No, sir.

Q. But your crew was; that is your present impression?

A. I don't know whether they was or not.

Q. All right. Now then, you tell the jury that you saw Mr. Mitchell turn out one light, is that right?

A. He either pulled the—he pulled the chain and the light went out, or he had his arm up, and I couldn't say for sure that he turned out a light, but I would say under oath he turned out two lights, I am sure.

Q. You testify under oath he turned out two lights?

A. That's right.

Q. Do you know where the light switch is in that Yard Office?

A. I do not.

Q. Where Mr. Mitchell and Mr. Duncan that testified here yesterday—you heard Mr. Duncan testify yesterday?

A. Yes, sir.

Q. Where the switch was?

A. I heard him testify.

Q. Do you know where the switch is at the powerhouse that turns off the lights in the Yard?

A. I have never been inside of the powerhouse, other than just in front of it, to get a watch repaired.

Q. What you say now is that you saw Mr. Mitchell turn off as many as two lights?

A. I think I did. It sure looked a lots like it, if he didn't.

Q. Did you testify here, on page 31, or beginning on page 32, "Question. What light", referring to Mr. Mitchell:

"Q. What light was he near?

"A. I don't remember. I can show you. It would be just like you walked by each light, and when you

came to them you would turn them out I seen him turn out three or four."

Did you say that?

A. Yes, sir.

Q. Three or four?

A. Yes, sir.

Q. He just went around turning out the lights one by one in that office, did he?

A. Yes, sir.

Q. You saw him turn out three or four?

A. I seen him turn out at least two I know of. Or he could have been turning off an electric fan, but as he pulled something the light would go out.

Q. Was there any electric fan running out there in October?

A. I don't know. They've got them in the office.

Q. All right.

A. I don't know if they was running or not.

The Court:

You were outside I believe you said when the main lights went off, were you?

The Witness:

Yes, sir.

The Court:

Yard lights?

The Witness:

Yes, sir.

Q. You say you were not afraid to work in there at all that night?

A. I wasn't afraid to work.

Q. Were you asked this question, and make these answers:

"Q. If you had heard me come down there and stand down where the cars were and holler 'Labor trouble, clear out the Yard' you wouldn't have paid much attention to that, would you?"

And your answer was: "Repeat that."

"Q. It would depend on who made the statement whether you would pay any attention to it at all?

"A. Not necessarily. If they hollered 'Labor trouble get out of the Yard' I would confer with somebody, and if they left I would leave too, because it's dangerous."

Did you say that?

A. I probably did. It could be dangerous, but that don't mean I was afraid.

Q. Oh, you are not afraid of danger?

A. Yes, sir, I am afraid of danger.

Q. Then you were asked the question:

"Q. Why is it dangerous?

"A. Well, you read in the paper where people get hurt.

"Q. Do you understand—"

Mr. Pettus:

We object to this. What page are you reading from?

Mr. Simpson:

41, a continuation of what I was just reading. "Well, you read in the paper where people get hurt."

Mr. Pettus:

We object to that, what he reads in the paper, incompetent, irrelevant and immaterial, a mental operation.

The Court:

I sustain the objection.

Q. But you did say because, Mr. Pennington, you would not stay there because it was dangerous, didn't you?

A. Ask the question again, please.

Q. Did you make this answer, "If they hollered 'Labor trouble, get out of the Yard' I will confer with somebody, and if they left I will leave too, because it is dangerous." You said that, didn't you?

A. Well, labor trouble always seems to be dangerous.

Q. I see, all right. Now then, Mr. Pennington, did you see any pickets during that strike?

A. No, sir.

Q. You knew that men stood around each entrance, didn't you?

A. I seen a lot of men around every entrance I went to.

Q. They stood there in shifts, day and night, didn't they?

A. I wasn't down there any all during the time of the night.

Q. All the time you were there you saw them standing at these entrances, didn't you?

A. Yes, sir, a lot of people, of all crafts.

Q. There were some that stayed there regular hours and then were relieved by others?

A. I couldn't say they did. I don't know about that.

Q. You can't say about that?

A. No.

Q. But you saw them all hours you were there?

A. Every time I went to one of the entrances there was people there.

Q. You saw them standing down there at the corner of Morris Avenue and 20th Street?

A. I don't recall even being down there.

Q. Did you see them standing at the entrance to the Superintendent's office down here on Morris Avenue?

A. I don't remember being down there during the strike.

Q. You can't say about that?

A. No, sir.

Q. What do you call a picket?

A. A man with a sign.

Q. A sign?

A. Yes.

Q. In other words, if a man hasn't got a sign you don't consider him a picket, is that right?

A. No, sir.

Q. A man stands there and tells you you can't go, or you can't go in only on certain conditions, or "I will", or "Will not let you in", you don't regard him as a picket, do you?

A. I didn't have any conversation like that.

Q. I say if a man—

Mr. Pettus:

We object to that.

Q. I am just trying to get what you mean.

Mr. Pettus:
Hypothetical.

The Court:
I overrule the objection.

Q. I am just trying to get what you mean by "picket".

Mr. Pettus:
We except.

Mr. Simpson:
This is cross examination, Your Honor.

The Court:
Overruled.

Q. I am trying to get what you mean by a picket. When you say there were not any pickets, you mean there wasn't anybody carrying signs around?

A. I don't know if there was a picket on the Railroad at any time.

Q. I say is that what you mean by a picket, is a man with a sign, unless he has got a sign you don't regard him as a picket?

A. No, sir.

Q. Now, Mr. Pennington, when you were first asked about making a phone call to Decatur in this examination a month after it happened, you denied it, didn't you?

A. I don't know if I did or not. I didn't know right off—I knew I called Decatur, but I didn't know just when I did. You refreshed my memory on that.

Q. You were refreshed by being reminded that the Telephone Company had a record of all long-distance calls, and then you said you made one?

A. I understand they keep records.

Q. And after that was called to your attention you then admitted you made one?

A. I didn't care who knew I made a phone call.

Q. I say after that was called to your attention, you then admitted you made a phone call, didn't you?

Mr, Pettus:
We object to that as an argument.

Mr. Simpson:
That's not an argument.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Weren't you asked this question, first, on page 68, "Did you make any phone, telephone calls at all to Decatur on that day", referring to that Monday, and did you answer "No, sir"?

A. I knew I had made a phone call, but I didn't remember it at that time, because it wasn't an important call.

Q. You didn't remember it until somebody said to you, why, they keep a record of long-distance telephone calls, and then you remembered it, didn't you?

A. I don't know that I did.

Q. All right. Now, on that telephone call you say you talked to the Yard Office?

A. Yes, sir.

Q. There at Decatur?

A. Yes, sir.

Q. Now you say that the reason you talked to the Yard Office was that the telephone directory at Decatur, the telephone operator up there told you there wasn't any Jack Coley listed in the telephone directory?

A. She sure did.

Q. Of course, you were not up there looking at the telephone directory, but you are telling this jury that the telephone operator up there told you that they didn' have any telephone listed for Jack Coley?

A. She said they didn't have any telephone listed, or no answer or something, that I couldn't—

Q. Oh, just "something." Now, you told us a while ago, didn't you, you told this jury under oath—

A. I would say she said she didn't have any telephone listed for Jack Coley.

Q. Will you look at this telephone directory that was effective October, 1954, and remained in effect until the next one went into effect in 1956, for Decatur, Alabama, and see if you don't see Mr. Jack Coley listed there at 511 Prospect Drive Southeast, at 2355?

A. I see it.

Q. You see it?

A. Yes.

Mr. Simpson:

We would like to tear that sheet out.

A. How do I know his—

Mr. Simpson:

And submit it in evidence, or we will put in the whole directory, so that there will be no dispute about what it was.

(Plaintiff's Exhibit No. 8 was marked for identification.)

Mr. Simpson:

We had better put in the next one that superseded that, January, 1956, to show that that was in effect at the time that telephone call was made.

(Plaintiff's Exhibit No. 9 was marked for identification.)

Mr. Simpson:

All right, sir.

Q. Now you say you admit that you did talk to the Yard Office up there, but you say that all you said was "This is W. F. Pennington. Do you know where Jack Coley is?"

A. I don't know for sure that is the exact words that I said. I asked them about Jack Coley.

Q. You heard the witness LeCroix testify day before yesterday, didn't you? You were sitting here in the Courtroom?

A. Yes, sir.

Q. You heard him say, didn't you, that you said to him "This is W. F. Pennington at Birmingham, and there is a bunch of us coming up there"?

Mr. Byrd:

We object to that, if Your Honor, please.

Mr. Simpson:
Wait a minute.

Mr. Byrd:
That was excluded from the testimony at that time.

The Court:
Overruled.

Mr. Byrd:
We except.

Q. "And we don't want to find you at work when we get up there"?
A. I didn't say anything like that.
Q. You heard Mr. LeCroix say that?
A. I can't help what he said; I didn't say that
Q. All right, but you did talk to somebody in the Yard Office?
A. Yes, sir.
Q. On that Monday afternoon?
A. Yes, sir.
Q. And you claim all you said to this man in the Yard Office was "This is W. F. Pennington. Do you know where Jack Coley is", that's all you said?
A. Well, something along that line.
Q. Something along that line?
A. Yes, sir.
Q. Now, when you got up there—let me ask you this first, did you say in that telephone conversation specifically these words: "When I get up there I want Oakworth to be out"?
A. I did not.
Q. Now, when you were asked that question a few weeks after this thing happened, I will ask you

whether or not you answered "No, sir, not that I remember"?

A. I don't know what my answer was then.

Q. Is your memory stronger about it now on trial than it was when this deposition was taken?

Mr. Pettus:
We object to that as argumentative.

The Court:
That is an argument. I sustain the objection.

Mr. Simpson:
All right.

Q. Has anything happened since that time to make your memory better about this thing?

Mr. Pettus:
We object to that.

A. I wouldn't think so.

The Court:
I sustain the objection.

Q. Now, on that examination were you asked these questions?

Mr. Pettus:
What page?

Mr. Simpson:
Page 77, Mr. Pettus.

"Q. You didn't tell him you wanted to find those people out of there when you got there?

"A. No, sir, not that I remember, anything like that.

"Q. Well, I am trying to get you to tell us definitely, Mr. Pennington, and I want to go over it again. You would remember a conversation as important as telling a man to stop working for your employer, wouldn't you?

"A. I don't know whether I would or not."

Were you asked those questions, and made those answers on November 28?

A. I don't remember them right off.

Q. Will you say you did or did not make those answers?

A. I didn't say it.

Q. You didn't make those answers?

A. Ask me that question again.

Q. You read what I read, didn't you?

A. I didn't say anything like that over the telephone.

Q. I say you heard what I read?

A. Yes, sir.

Q. I am asking you if you made that sort of an answer, that you don't know whether you remember telling this man to get out of there or not; did you make that answer on November 28 when this deposition was taken?

A. I probably did. I don't know right off.

Q. You probably did?

A. Whether I did or not, about that.

Q. Well in answer to the question on page 78 "Did you mention walkout or work stoppage in any way"? And did you answer "Not that I remember"?

A. I don't remember making any—

Q. You say now positively you didn't mention work stoppage, don't you?

A. I don't remember making it. There was three of us, and all we did was to show a newspaper.

Q. I am referring to the telephone call.

A. Oh, excuse me.

Q. I am referring to the telephone call. Do you say now that you did not make that, or do you just say you don't remember making that statement?

A. I would say I didn't make it. I think I would remember it if I would say anything like that, I would remember it I think.

Q. Sc your answer is today not that you don't remember whether you made it or not, but your answer is today that you did not make it?

A. I did not make it.

Mr. Simpson:

All right.

The Court:

Gentlemen, we are going to take a 20 minute recess.

(A short recess was had.)

The Court:

All right, Mr. Simpson.

Q. Now, Mr. Pennington, when you got up there you went first to the Yard Office, didn't you, out about a mile away from town?

A. No, sir, I didn't.

Q. You claim you went up to see Mr. Jack Coley's house and found nobody at home, is that right?

A. That's right.

Q. All right.

A. I found nobody lived there.

Q. Then you went right straight to the Yard Office?

A. Yes, sir.

Q. When you went in that Yard Office I will ask you whether or not, when you walked in you looked around and said "Where is that man I talked to a while ago and told him to clear this place out"?

A. I didn't say that.

Q. Then did you begin pointing your finger, and counting around at the men that were sitting there at that desk, some five or six of them?

A. If I had I would have known how many was in there. I didn't do that.

Q. Did I ask you how many were in there?

A. Yes, sir, I think so.

Q. Did I? Your memory is a lot better than mine because I don't remember having asked you that. You pointed to those men, didn't you?

A. No, sir.

Q. And said "Where is that man I have been talking to"? "Where is that man I talked to a while ago and told to clear out this office", didn't you?

A. No, sir.

Q. You are positive of that now, are you?

A. I think I would have remembered it if I had said that.

Q. There is not any doubt about that in your mind? You didn't say that?

Mr. Byrd:

We object to that, argument

The Court:
Sustained.

Q. I will ask you whether or not about a month after this thing happened, on page 90, your memory was so good about that. Let me ask you if you were asked these questions and made these answers:

"Q. I am asking you if you said to those people 'Where is the man I called and told to get this office cleared out' "?

And did you answer:

"A. I don't remember saying that.
"Q. Did you say that or that in substance?
"A. I don't understand that question.
"Q. Did you say anything that meant that?
"A. What?
"Q. 'Where is the man I called and told to get this office cleared out'?
"A. I don't remember saying any such thing as that
"Q. I will ask you if you had said anything like that, for the purpose of running men off the job, you would remember it?
"A. I think I would.
"Q. You would, wouldn't you?
"A. I don't remember saying anything like that."

Were you asked those questions?

Mr. Pettus:
The last answer is "I don't remember saying any such thing."

Mr. Simpson:

"I don't remember saying any such thing."

Q. Were you asked those questions and did you make those answers?

A. I think I did.

Q. Yes.

A. There is a lot of that book there. I don't know right off what all I said in that book.

Q. Is your memory better today than it was a month after this thing happened about what was said?

Mr. Pettus:

We object to that as argument.

The Court:

Sustained.

Q. I will ask you this question, has anything happened in the meantime to give you more information about what you said up there on that occasion?

A. I wouldn't think so.

Q. All right. Now then, I will ask you whether you saw Mr. Hardwick, the Agent, up there at Decatur on that trip?

A. I don't know whether I did or not. I don't know Mr. Hardwick.

Q. Did you see an elderly man who had had a heart attack, and was very pale and emaciated, sick looking?

A. I don't know anything—whether I did or not.

Q. You didn't know whether you saw him or not?

A. I don't know anything about anything like that.

Q. You don't know whether you saw him or not. Did you tell this man Hardwick, who was the Agent

there, and was in the freight office when you got over to the freight house "I let you off once, and I am telling you, I am not going to let you off again"? Did you make any such statement as that to Mr. Hardwick?

A. I did not. I didn't know Mr. Hardwick, I didn't make that statement to anycody.

Q. You are positive of that. Well now, were you asked this question and did you make these answers on November 29 when you were examined here last year, "Question: Did you tell Mister—"

Mr. Pettus:
What page?

Mr. Simpson:
Page 104. "Did you tell Mr. Hardy"—Your Honor, that is a stenographic error, it should be Hardwick.

"Q. Did you tell Mr. Hardy or any man up there 'I let you off once, and I am telling you I'm not going to let you off again?

"A. I don't remember telling anyone that.

"Q. Did you say that or in substance, do you recall saying that?

"A. I don't understand that question."

Mr. Pettus:
Where are you reading from?

Mr. Simpson:
104, the second question down.

Mr. Pettus:
All right.

Mr. Simpson:
And you said:

"A. I don't understand that question.
"Q. What do you mean, you don't understand?
"A. That question you asked me.
"Q. Did you tell Mr. Hardy or any man 'I let you off once, and I am telling you I am not going to let you off again'?
"A. I don't remember saying any such thing to anybody at any time like that.
"Q. That would have been a threat, wouldn't it?
"A. It sounded like one.
"Q. If you made a threat you would have remembered that?
"A. Yes, sir, I think so.
"Q. You wouldn't tell us you didn't make that statement?
"A. I don't remember saying that to anybody."

Were you asked those questions and did you make those answers about a month after this thing happened?

A. I believe you asked me that.
Q. And you made those answers, did you, that I have read?
A. Yes, sir. I still don't remember saying anything like that.
Q. Well, you say today that you didn't say that, don't you?
A. I say I didn't say it. If I had said anything like that I would have remembered it.
Q. All right. Now then, do you know Mr. Petty, the chief clerk there in the freight office?

A. No, sir, I don't.

Q. Do you remember the gentleman who testified here on Monday afternoon, and we put him on out of order, so he could get back to Decatur and let Mr. Long and the other men come down here? You saw him in the Courtroom here?

A. I remember the guy that said he was Mr. Petty?

Q. Now remember the guy that said he was Mr. Petty?

A. Yes, sir.

Q. All right. Did you say anything to Mr. Petty about what you had done to him in the 58 day strike?

Mr. Pettus:

We object to that incompetent, irrelevant, and immaterial. He has asked if he knew Mr. Petty, and that's the only purpose it was admitted for.

The Court:

There is a question of identification involved.

Mr. Simpson:

Yes, sir.

The Court:

Overruled.

Mr. Pettus:

We except.

The Court:

It is admitted and limited for that purpose only.

Mr. Simpson:

I am asking him now about what he said on that occasion, Your Honor, what he actually said on the occasion when he went in the office.

The Court:

Yes.

Q. Did you say to Mr. Petty that you let him off light on the previous occasion, but you wouldn't do it any more?

A. I don't think I have ever seen Mr. Petty before, before he got on the stand. If I have, I don't remember it.

Q. You heard what Mr. Petty said that you said to him, didn't you?

A. Yes, sir.

Q. Do you now deny that you said that to Mr. Petty?

A. I am denying it. I didn't say anything like that.

Q. You didn't say that to Mr. Petty?

A. No, sir.

Q Or that in substance?

A. That's the first time I had ever seen him, the only time I ever knew that he was Mr. Petty is when he was up here and said he was Mr. Petty.

Q. Do you deny that you saw that man, that chief clerk, in that office when you went in there that afternoon?

A. I don't know, I don't remember seeing him .I don't know the man.

Q. I will ask you whether or not on that examination a few weeks after this thing happened, last fall, you were asked these questions and made these answers.

Mr. Pettus:
What page is that?

Mr. Simpson:
Page 104 at the bottom, "Did you know anything about Mr. Petty having been beaten up during the 58 day strike?"

Mr. Pettus:
We object to that.

Mr. Simpson:
Answer "No, sir."

Mr. Pettus:
As to what he knew about it.

The Court:
I sustain the objection.

Mr. Simpson:
All right, beginning on page 105:

"Q. Do you know Mr. Petty?
"A. No, sir.
"Q. Did you know a man was beaten up during the 58 day strike?"

Mr. Pettus:
Now, we object to that, "Do you know a man that was beaten up during the 58 day strike", incompetent, irrelevant, and immaterial.

The Court:
I sustain the objection.

Mr. Simpson:
We except.

Q. Were you up there on an occasion that a man was beaten up during the 58 day strike near the Yard Office?

Mr. Pettus:
We object to that on the same ground.

The Court:
Sustained.

Mr. Simpson:
We except.

"Q. Were you near there at that time", and did you answer "I don't remember that."
Was that what you said, that you just didn't remember whether you were up there when a man was beaten up or not?

Mr. Pettus:
We object to that, argumentative.

The Court:
Sustained.

Mr. Pettus:
On the ground it is incompetent, irrelevant and immaterial.

Mr. Simpson:
We except.

Q. As Mr. Petty was walking out of the office up there did you ask him if he was coming back to work the next day?

A. I didn't ask anybody if they was coming back the next day.

Q. Did Mr. Petty say to you, as he said there on the stand, "I'll just have to wait and see"?

A. I didn't know Mr. Petty until he testified.

Q. Did anybody—

A. No, sir.

Q. Did Mr. Petty or anybody else have this conversation with you?

A. No, sir.

Q. And did you say to him "Well, you better not, I let you off light before, and I'm not going to do it again"?

A. I didn't say anything like that.

Q. I will ask you whether or not you had, within six months of the time that you made this visit to Decatur, hit Mr. Petty as he was sitting in his automobile and knocked him unconscious there at the Decatur Yard?

A. I certainly didn't.

Q. You tell the jury that you did not strike Mr. Petty?

A. I did not strike Mr. Petty. If I had got that close to him I would have known him before yesterday. I never seen the man before that I remember until yesterday or day before when he testified.

Q. Did you within six months of the time you made this trip there on November 24 up to Decatur, did you walk up to a car where a man was driving into the L&N property there, within six months prior to the time you made this trip in October, and hit him and knock him unconscious, then open the door,

and drag him out and leave him there lying on the street?

Mr. Pettus:
We object to that, some unidentified man, incompetent, irrelevant and immaterial.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did you do that?
A. I did not.
Q. Mr. Petty or anybody else?
A. Nobody.
Q. All right. You say you know Mr. Toone, don't you?
A. Yes, sir.
Q. And you saw Mr. Toone there on this occasion, and about all you say you did with Mr. Toone was to shake hands with him?
A. I talked to him.
Q. I will ask you whether or not you said to Mr. Toone this, or this in substance on the occasion of your visit to that Yard Office—no, this was at the freight office, on October 24, 1955: "If you fire this time", or in this strike, "Its not going to be like it was before, you'll fire in hell, because I'm going to kill you"?
A. I didn't say anything like that.
Q. You didn't say that to Mr. Toone?
A. No, sir.

Q. The Special Agent on that occasion?

A. I would look a little silly, him with a gun, and talking to him like that, wouldn't I?

Q. I am not asking you whether you look silly or not, you understand that. I'm asking you if you said that to Mr. Toone?

A. No, sir.

Q. On that day?

A. I did not.

Q. "If you fire, you'll fire in hell"?

A. No, sir.

Q. You heard Mr. Long say that he heard you say that here the other day?

A. I heard him.

Q. You saw Mr. Long, didn't you?

A. Yes, sir.

Q. He testified here on the stand?

A. Yes, sir.

Q. Now, did you say what I asked you, or that in substance? Mr. Gibson calls my attention to the fact that I may not have got the words accurately that Mr. Long said. But did you say that in substance?

A. I didn't say anything that I would care for the whole United States, men, women, little children and everything hearing, in Decatur at no time.

Q. Did you say to him in substance that if you fire this time—did you say to him "You fired in the 58 day strike, and if you fire this time one of us will be firing in hell, because I'm going to kill you"?

A. I didn't even know he fired in the 58 day strike, and I didn't say that.

Q. Now, I will ask you if on your examination in November, of last year, about what happened up there on this occasion, if you were asked these questions and you made these answers.

Mr. Pettus:
On what page?

Mr. Simpson:
Beginning on page 101, at the top of the page: "Did you make a statement to Mr. Toone about what he had done in the April strike?"

Mr. Pettus:
We object to that, repetitive.

Mr. Simpson:
Talking about what statements he made on this occasion.

Mr. Pettus:
He has been over it several times.

The Court:
I overrule the objection.

Mr. Simpson:
I haven't been over it about Mr. Toone with him before.

"A. I don't remember saying anything about anything in the April strike.
"Q. Do you remember Mr. Toone worked as a fireman in the April strike.
"A. I don't know about that.
"Q. You know he did work as a fireman?
"A. I don't know no such.
"Q. Did you tell him at that time you didn't want him working as a fireman again?
"A. I don't remember saying any such thing as that to Mr. Toone.

"Q. Will you say you did not say that? You wouldn't make a threat to him like that without remembering it, would you?"

Mr. Pettus:
We object to that as argumentative.

Mr. Simpson:
And the answer "That would be a threat."

The Court:
I sustain the objection.

Mr. Pettus:
Now, we move to exclude Mr. Simpson's answer.

The Court:
That answer is excluded.

Mr. Simpson:
All right. "Yes, it would. Did you say that to Mr. Toone"?

Mr. Pettus:
We object to that.

Mr. Simpson:
This is a straight-out question as to whether he said that to Mr. Toone.

Mr. Pettus:
We object to the "Yes, it would."

The Court:
I overrule the objection.

Mr. Pettus:
We except.

Mr. Simpson:
All right.

"A. I don't remember saying any such thing to Mr. Toone.

"Q. You won't say you didn't say it?

"A. I don't remember saying such a thing. That would be silly, threatening him with a gun.

"Q. I am not asking you whether you are being silly or not being silly, but did you say to Mr. Toone 'I don't want to hear about you working as a fireman this time'?

"A. I don't remember saying anything like that to Mr. Toone, and I think if I had said it I would remember it.

"Q. You know you would remember threatening a man with a gun who was a good friend of yours, don't you? That would be an unusual thing?"

Mr. Pettus:
We object to that.

Mr. Simpson:
"A. Yes, sir."

The Court:
Overruled.

Mr. Pettus:
Let us get our objection in, Mr. Simpson.

The Court:
That is an argument.

Mr. Pettus:
That is an argument.

The Court:
I sustain the objection.

Mr. Pettus:
I ask that it go out.

The Court:
It is excluded, gentleman.

Mr. Simpson:
Then skipping the next, which is probably also an argument:

"Q. Then will you tell us you did or didn't?
"A. I don't remember saying anything like that to Mr. Toone.
"Q. You refuse to say you didn' tdo it?"

Mr. Pettus:
We object to that.

Mr. Simpson:

"Mr. Pettus:
"Wait a minute."

The Court:
I sustain the objection.

Mr. Simpson:
"I didn't say that."

Mr. Pettus:
We move to exclude Mr. Simpson's answer after the Court sustained the objection.

The Court:
That is excluded, gentlemen.

Mr. Simpson:
You don't exclude this question, "You refuse to say you didn't do it? Then will you tell us you did or didn't?", and the answer "I don't remember saying anything like that to Mr. Toone",—is that in, may it please Your Honor?

The Court:
That is excluded.

Q. What has helped to make your memory better today?

Mr. Pettus:
We object to that.

Q. Has anything happened to make you clear and certain as you are testifying here before this jury that you did not tell Mr. Toone that, when you were not sure, and just couldn't remember in November, 1955?

Mr. Pettus:
We object to that as an argument.

The Court:
As to whether anything has happened?

Mr. Simpson:
Yes, sir.

The Court:
I overrule the objection.

Mr. Pettus:
We object to the statement and the question, which is just contrary to what has been read. He said the same thing here and there.

The Court:
Overruled.

Mr. Simpson:
He said he didn't remember then.

Mr. Pettus:
We except.

Q. What has happened to make you positive today that you didn't say that to Mr. Toone, and yet in November about five weeks after this thing happened you couldn't remember whether you did or not?

Mr. Pettus:
We object to that as an argument.

The Court:
I sustain the objection as to that.

Q. Has anything happened to make you positive of it now?

A. I said back further in that statement if I had said anything like that, you remember it, that I said that if I had said things like that, I think I would remember it. I did not remember saying anything like that at any time, and I did not say anything like that.

Q. You say now that you did not say it?

A. I did not say anything like that.

Q. All right. Now, while you were in the freight office there did Mr. Petty and Mr. Smith, the Cashier, ask you for time to put up the money and freight bills that they had out there on their desk?

A. No, sir. I do not know Mister—I did not know Mr. Smith until he testified.

Q. Did any two men linger in the office after you went in the freight office and said whatever you did say?

A. If they did, I didn't see them.

Q. And then ask you if they might, before they had to go out, put up ten thousand dollars worth of freight bills and money that was lying out there, and in their drawer there on the desk, lock it up in the safe?

A. I didn't see any money in there.

Q. I am not asking you whether you saw the money. Did any two men, whether Mr. Petty and Mr. Smith or not, did any two men ask you to let them put up the money and freight bills they had out there on the desk?

A. They didn't ask me.

Q. Did they ask Mr. Bentley or Mr. Barnett in your presence?

A. If they did, I didn't see them.

Q. Were Mr. Bentley and Mr. Barnett with you at that time?

A. Yes, sir.

Q. When you were in the freight office?

A. Yes, sir.

Q. They were there present?

A. Yes, sir.

Q. They stayed with you during all this time, didn't they?

A. Pretty close together, yes, sir.

Q. You all stayed right together, didn't you?

A. Pretty close.

Q. When you went through the Yard Office you all were right together, weren't you?

A. I don't think so.

Q. When you went to the Yard Office, everybody was there working, there, weren't they?

A. Yes, sir.

Q. When you left there wasn't anybody working, was there?

A. I don't know.

Q. Didn't you say you just showed them a paper, and they all said "That's enough for me"?

A. I don't know whether they all came out, I don't know whether they did or not.

Q. You didn't see anybody working there when you left there, did you?

A. Not that I remember, I don't.

Q. When you got to the freight office they were all working there, weren't they?

A. Yes, sir.

Q. And when you left they all left, and the office was locked up, as the last man came out, wasn't it?

A. No, sir, they didn't any of them leave that I remember when we left.

Q. You left everybody at work?

A. No, they wasn't working, they were standing on the platform.

Q. On the platform outside the office?

A. They was under shelter.

Q. I say they were outside of the office though, outside of the enclosure?

A. Yes, sir, some of them were. I don't know if they all were or not.

Q. The place where they were working was inside of this room there in the enclosure in the freight office, wasn't it?

A. Some of them were working inside of what you call the office, some of them outside shelter, that would be—

Q. And the Cashier's desk was the first thing you came to when you walked in that office, wasn't it?

A. I don't remember anything about the Cashier's desk.

Q. What was there, a counter, right in front of you?

A. There was several desks in there.

Q. I say there was a counter there right as you walked in the front door, wasn't there, Mr. Pennington?

A. Something like this right here (indicating).

Q. The counter wasn't quite that high, was it?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. All right. Now, there was an old man sitting behind that counter, wasn't there, when you walked in?

A. There was several pretty old people in there.

Q. You saw him testify here Monday afternoon, Mr. Smith, didn't you?

A. No, sir, I never remembered seeing him before in my life.

Q. I say you saw him here Monday, didn't you?

A. Yes, sir.

Q. The old man that said he had 43 years time in with the L&N Railroad?

A. Yes, sir, I saw him.

Q. And we put him on out of order so he could get back and let Mr. Long and Mr. Petty come down the next day. You remember last Monday, don't you?

A. Yes, sir.

Q. We put him on out of order. Did you see that old gentleman there that afternoon when you walked in?

A. I don't remember seeing him. It could be that I have seen him, but I just didn't recognize him.

Q. Well now, whether it was Mr. Smith or wasn't Mr. Smith sitting behind that Cashier's desk, I will ask you if you told him the third time to come on out, and come on out now?

A. No, sir, I did not.

Q. And if he didn't, after he locked up his money, come on out?

A. No, sir, didn't.

Q. And did you ask that old man as he walked on away from there after he had come out if he was going to come back there the next day to work?

A. I didn't ask anybody if they were coming back.

Q. Did he tell you "I don't know, I'll have to wait and see", did he tell you that?

A. No, sir.

Q. Did you say to him "If you do, I'll whip you all over this place"?

A. No, sir.

Q. You didn't tell him you would do that?

A. No, sir.

Q. You are positive of that?

A. Yes, sir.

Mr. Simpson:

You come on down, please, sir.

Mr. Pettus:
Come down.

The Court:
You are excused.

(Witness excused.)

Mr. Pettus:
Call Mr. Parker, H. K. Parker.

H. K. PARKER, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you please state your name?
A. H. K. Parker.
Q. What do you do, Mr. Parker?
A. Locomotive Fireman
Q. Are you a member, or were you in October, 1955 a member of any of the Railroad Brotherhoods?
A. The Brotherhood of Locomotive Firemen.
Q. Locomotive Firemen?
A. Yes, sir.
Q. Do you recall this meeting that there has been testimony about on Sunday at your house, October 23?
A. Yes, sir.
Q. Where was that meeting held in your house?
A. In my basement.
Q. In your basement?

A. Yes, sir.

Q. Do you recall about the time the meeting occurred?

A. Between 4:00 o'clock—right around 4:00 o'clock.

Q. Right around 4:00 o'clock?

A. Yes, sir.

Q. Can you name some of the people that were at the meeting?

A. Yes, sir.

Q. All right.

A. Myself, J. M. Brown, Jr., T. A Kennedy, Vann, Logan, Reese Thomas, Howard Southerland, Fred Edwards.

The Court:

Who is that?

The Witness:

Fred Edwards, a conductor on the northern end. I think H. M. Baum was there, I am not positive, but I think he was; McCutcheon, Letchman, Howard Southerland. I am not positive, but I think Howard Anderson was there.

Q. Were there any men there other than firemen?

A. There was some engineers there.

Q. There were some engineers there?

A. Yes, sir.

Q. I believe you said that—was it Fred Edwards that was a conductor?

A. Fred Edwards is a conductor, and there is another man, Andrew Stuart, he is a pipe fitter.

Q. Pipe fitter?

A. Yes, sir.

Q. Well, it was an open meeting, wasn't it?

Mr. Simpson:
We object to leading. He asked him if it wasn't an open meeting, telling him, and then asking him if it wasn't.

The Court:
Sustained.

Q. I will ask you was it an open meeting?
A. No, sir, it wasn't no meeting.
Q. What was it?
A. It was just a get together.
Q. Just a get together?
A. Yes, sir, that's right.
Q. In other words, it was not a meeting, it was just some men getting together there?
A. Yes, sir.
Q. And there were several crafts represented?
A. Yes, sir.
Q. Is that right?
A. Yes, sir.

Mr. Simpson:
We object to his saying "Isn't that right", and leading him, telling him what to say.

The Court:
Sustained.

Q. Do you recall the subject of the discussion there, Mr. Parker?
A. The only discussion that I heard was making some kind of effort to get those jobs replaced, reestablished, the hostler helpers jobs.

Q. Had you known about the notice of the abolition of the hostler helpers jobs?

A. Yes, sir.

Q. What was said at that meeting, giving the name of the man saying it, and anything you recall being said?

A. Well, they was all talking about the same time. There was two or three little huddles in there, little groups in there, and they was all talking. About the only discussion I heard was making some kind of preparations to get the jobs back.

Q. Do you know what that preparation was?

A. No, sir.

Q. Do you remember Mr. Otts saying anything, and anything in particular that he said?

A. If he said anything about getting them back, I don't know it. I must have been on the other side of the room, talking to another bunch of fellows.

Mr. Simpson:

Now, we object to the voluntary statement that he must have been somewhere.

The Court:

Sustained. That is excluded, gentlemen.

Q. Well, you said there were little groups there in the room, talking?

A. That's right.

Q. How long did the meeting last?

A. About 30 or 40 minutes.

Q. About 30 or 40 minutes?

A. Yes, sir.

Q. Then did the men leave your house?

A. Yes, sir.

Q. Where did you go, if anywhere?
A. I went to Rex's Barbecue.
Q. About what time did you arrive there?
A. About five minutes after the meeting.
Q. Would that have been between 5:00 and 6:00?
A. That would have been between 4:30 and 5:00.
Q. Between 4:30 and 5:00?
A. Yes, sir.
Q. How long did you stay at Rex's?
A. Just a few minutes. I drank a Coca-Cola while I was there. I might have stayed 30 minutes.
Q. Then what did you do?
A. Went back home.
Q. Came back home?
A. Yes, sir.
Q. Did you stay at home all that evening?
A. Yes, sir.
Q. And what did you do on Monday following?
A. The first thing I done, I took my wife to work, and then I come back to Rex's Barbecue.
Q. How long did you stay there?
A. Oh, I was there several times during the day.
Q. You would come and go?
A. Yes, sir.
Q. To Rex's Barbecue?
A. Yes, sir.
Q. Do you remember any other places you visited on Monday?
A. No, sir.
Q. Were you at the Rex's Barbecue at nighttime on Monday?
A. Yes, sir.
Q. And what time did you get home Monday night, do you recall?
A. I met my wife and went home and ate supper.

Q. You went home and ate supper?

A. Yes, sir.

Q. Then did you go to Rex's Barbecue after supper Monday?

A. Yes, sir.

Q. Then you came home, did you?

Mr. Gibson:

We object to leading, if Your Honor, please. Let the witness do the testifying.

The Court:

I sustain the objection.

Q. Well, tell us where you went after you left Rex's Barbecue at night then?

A. Went home.

Q. You went home?

A. Yes, sir.

Q. The same place?

A. Yes, sir.

Q. Same home, wasn't it?

A. Yes, sir.

Q. And Tuesday, what did you do?

A. Took my wife to work, come back by Rex's Barbecue, went home and slept a while. That afternoon about 2:00 o'clock I went to Clay, Alabama fishing, and they wasn't biting, and I didn't stay up there but a couple of hours.

Q. And when you got back, where did you go when you got back?

A. I went home first, and stayed a while. Then I went back up to Rex's Barbecue.

Q. Where did you go after you left Rex's Barbecue that time?

A. I met my wife, I went after my wife.

Q. Then what did you do later, if anything, that day?

A. We ate supper. sat around the house until about 9:00 o'clock.

Q. Then what did you do?

A. Went back to Rex's Barbecue.

Q. How late did you stay there that night? That is Tuesday night?

A. Yes, sir.

Q. How late did you stay there then?

A. About midnight.

Q. Then where did you go?

A. Went back home.

Q. Wednesday, what did you do?

A. The same thing, carried my wife to work, went back to Rex's Barbecue.

Q. During this time from Sunday—what time did you go back to work, Mr. Parker, do you recall?

A. I believe it was Thursday night.

Q. Thursday night?

A. I am not positive, but I believe I went back to work Thursday night.

Q. Now, from the time, from Sunday night on until you went back to work, did you use any threats of force or violence, or attempt to intimidate any employee of the L&N?

A. No, sir.

Q. You did not?

A. No, sir.

Q. What were you earning at that time, Mr. Parker?

A. Sir?

Q. What were you being paid by the L&N at that time?

A. I wasn't being paid nothing.

Q. You didn't get anything while the work stoppage was on?

A. No, sir.

Q. But what were your earnings when you were working then?

A. $15.87.

Q. $15.87 a day, is that right?

A. Yes, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Simpson:

Q. Did you put in a claim against the L&N Railroad?

A. Sir?

Q. Have you put in a claim against the L& NRailroad for $15.87 a day for the time you were out there, while this work stoppage or strike was in progress?

A. If I have, I never received no money from it.

Q. I say have you put in a claim?

A. I don't think so.

Q. Your attorney was asking you about i?

A. No, sir.

Q. You don't understand that the L&N owes you that money, do you?

A. I don't know about that. I never got any from them.

Q. All right, sir. Now on Friday night before this walkout on Sunday—I will be very brief, Your Honor—on Friday night before this walkout or strike or whatever it was on Sunday afternoon, you

attended the Union meeting over in Inglenook, didn't you?

A. Yes, sir.

Q. And you heard Mr. Grissom say there were about eight or nine or something like that there?

A. Yes, sir.

Q. And in that meeting the question of these hostler helpers jobs was not discussed as I understand it, except that somebody read a letter, Mr. Lloyd read a letter from Mr. Paschal about it?

A. That is, to the best of my memory, all that was said in the Union Hall there, just a letter read.

Q. Just a letter read?

A. The Recording Secretary read the letter.

Q. Now that Union, Brotherhood of Locomotive Firemen and Enginemen, that was the Union meeting you were attending?

A. Yes, sir.

Q. You had been Local Chairman or President of that Union yourself, hadn't you?

A. Yes, sir.

Q. And it was a strong, powerful Union?

A. Yes, sir.

Q. Had grievance machinery to take care of any wrongs that were done to its people, didn't it?

A. That's right.

Q. With the Railroad?

A. Yes, sir.

Q. It had a Local Chairman here, Mr. Otts?

A. Yes, sir.

Q. To represent the men on any grievance?

A. Yes, sir.

Q. And it had lawyers in Cleveland, and lawyers in Birmingham, and lawyers everywhere to take care of their men if anything was done wrong to them, didn't you?

A. Yes, sir.

Q. It had plenty of money to enforce their rights?

Mr. Pettus:

We object to that.

Mr. Simpson:

I think he knows. He has been an officer of it.

The Court:

Sustained.

Q. Anyway, that Union was the Union that had in its contract these hostler helpers, outside hostler helpers?

A. Yes, sir.

Q. It also had the inside hostler helpers too, didn't it?

A. Yes, sir.

Q. In its contract?

A. Yes, sir.

Q. There were three outside hostler helpers jobs, weren't there?

A. One on each shift, that's right.

Q. Three, one the first, one the second, and one the third shifts?

A. Yes, sir.

Q. Now, those outside hostler helpers were the men who brought the engines out of the Yard, outside of the Yard?

A. Yes, sir.

Q. That is they came along with the hostler who brought the engine out?

A. Yes, sir.

Q. And the inside hostler helpers were not involved in this matter, were they?

A. No, sir.

Q. They are the fellows that work on engines around in the Yard and sand them, and water them, and so forth?

A. Yes, sir.

Q. They were not involved in this, they were not cut off, it was the outside hostler helpers jobs that were involved?

A. Yes, sir.

Q. Now you say there was a letter read there from Mr. Paschal, your General Chairman, at that meeting?

A. That's right.

Q. And Mr. Paschal said that the matter would be taken up by him with the Railroad, that he thought it was in violation of their contract, cutting off these jobs, didn't he?

A. I don't remember the contents of the letter, but it was read in our meeting.

Q. And the letter said that he would take it up with the Railroad and follow the matter up, didn't it?

A. I don't remember what the letter said.

Q. And in the meeting there was nothing further said about this strike, or protest, or anything of the kind, but after the meeting was over a group of you agreed to meet down on the sidewalk outside, didn't you?

A. Yes, sir.

Q. So instead of having this discussion in the meeting of the Brotherhood, you had it out on the sidewalk after the meeting had adjourned, didn't you?

A. No, sir.

Q. Where did you have it?

A. That wasn't no meeting, the meeting was over.

Q. I say you waited until your meeting was over, and then had this discussion out on the sidewalk, didn't you?

A. It came up, yes, sir.

Q. It came up?

A. Yes, sir.

Q. Now then, who was in this group that met down there and discussed that matter?

A. Well, there was seven or eight of us, or six or seven of us. I don't remember just who left, but the remainder of us. I was asked about a place to have a meeting.

Q. To have a meeting?

A. That's the reason we was—

Q. I didn't ask you about that yet, I just asked you who was in this group that met in this meeting after the other meeting adjourned, down on the sidewalk, who was there?

A. I think it was myself and Grissom and McCutcheon, Jim Brown, J. B. Otts, and one or two more, I don't remember who.

Q. That's all you can remember?

A. Yes, sir.

Q. And it was practically the same men that had been upstairs there?

A. All except about two or three that left, yes, sir.

Q. All except about two or three that left?

A. All except two or three, yes, sir.

Q. In this meeting down on the sidewalk you all agreed to have a meeting Sunday afternoon, that would be the second day, at 4:30 in the afternoon at your house?

A. Yes, sir.

Q. And you did have that meeting?

A. Yes, sir.

Q. Now, at that meeting at your house on Sunday afternoon was there anybody there who was not a fireman, and if so tell us who it was?

A. Yes, sir, there was either a pipe fitter or machinist, I don't know which, with the L&N, Andy Stuart.

Q. Mr. Stuart?

A. Then there was a conductor on the north end, Fred Edwards.

Q. Fred Edwards, he had been a fireman, hadn't he?

A. No, sir.

Q. He had not?

A. No, sir.

Q. Mr. Fred Edwards was there?

A. Yes, sir.

Q. He is the man that testified here the other day, isn't he?

A. Yes, sir.

Q. Edwards and Stuart were there?

A. Yes, sir.

Q. Now, was there anybody else there that was not a fireman?

A. That's all, the best I remember that's the only ones that was there that didn't belong to either the engineers or firemen.

Q. Well, if there was anybody there who was an engineer, he had been a fireman?

A. Or still is a fireman.

Q. And was still a fireman if he was not running an engine?

A. Yes, sir.

Q. And a member of the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. Now, Mr. Pettus asked you if this meeting didn't have other crafts in it?

A. Yes, sir.

Q. If there were any other crafts there, that was Mr. Edwards and Mr. Stuart, wasn't it, these two men?

A. Yes, sir.

Q. You don't know how they happened to come, do you?

A. No, sir.

Q. You didn't bring either one of them, did you?

A. No, sir.

Q. There were 20 men at that meeting, including those two, weren't there?

A. 20 or 21 or 22, something like that; in that neighborhood, yes, sir.

Q. So there were at least 18 at the meeting there that were firemen?

A. 17 or 18 yes, sir.

Q. 17 or 18 that were firemen?

A. Yes, sir.

Q. Now, the matter that was considered there was, of course, the question of getting these three jobs restored?

A. Yes, sir.

Q. That's right, wasn't it?

A. Yes, sir.

Q. That was the only matter discussed, wasn't it?

A. Yes, sir.

Q. How to do that?

A. Yes, sir.

Q. And did you hear Mr. Kennedy make a statement there at that meeting?

A. Yes, sir.

Q. You heard Mr. Grissom here a while ago say that Mr. Kennedy didn't say anything. Mr. Grissom was mistaken about that, wasn't he?

A. Well, Mr. Kennedy was over there talking to Logan and Vann. He didn't make a statement to the whole crowd. They was off to themselves doing a little talking of their own.

Q. Mr. Kennedy didn't get up there and state that he had talked to Jake Paschal, the General Chairman, that afternoon? You heard it at least, didn't you?

A. If he made any statements to the whole crowd I didn't hear it.

Q. I am not asking you about anybody else but yourself. You heard him make that statement?

A. No, I didn't.

Q. You say you heard Mr. Kennedy say something. What did you hear him say?

A. I walked over there to where he and Vann and Logan was talking, and they was—

Q. Now my question is what did you hear Mr. Kennedy say?

A. Well, I'm fixing to tell you now.

Q. All right, sir, please do.

A. They was talking about taking it up through regular channels.

Q. Mr. Kennedy was saying "Let's take it up through regular channels"?

A. Just them three.

Q. Just those three talking together?

A. Yes, sir.

Q. They came together, didn't they?

A. Yes, sir.

Q. And they also left together?

A. Yes, sir.

Q. Now, don't you know Mr. Kennedy got up there and said to that meeting, and that you heard him say at the meeting that "I have talked to General Chairman Jake Paschal this afternoon, and Mr. Paschal says for us not to strike, that a strike on this matter would be an outlaw or wildcat strike, and for us not to do it"? You heard Mr. Kennedy say it?

A. He may have said it, but I didn't hear it. I must have been on the other side of the basement.

Q. You won't say he didn't say it?

A. No, sir, I won't say he didn't say it.

Q. Did you hear somebody then after the decision to make a strike out of it, did you hear anybody tell Mr. Kennedy—

Mr. Pettus:

We object to that assumption, after the decision.

Mr. Simpson:

All right, I withdraw that part of the question.

Q. Did you hear anybody say to Mr. Kennedy "Anybody who doesn't want to help do the picketing is not welcome to this meeting, and we want them to leave"?

A. No, sir, I didn't hear that.

Q. You didn't hear anybody say it?

A. No, sir.

Q. You did see Mr. Kennedy, Mr. Vann and Mr. Logan get up and leave, didn't you?

A. Yes, sir.

Q. Before the meeting adjourned?

A. Yes, sir.

Q. You don't know why they left in advance of the rest of you, do you?

A. No, I don't.

Q. So far as you know, nobody said anything to those three men that would invite them or suggest to them that they leave the meeting, did they?

A. I think I'm the only one that went over there and talked to them.

Q. I am asking you, well, did you say anything to them, that if they didn't want to help picket they ought to get on out of the meeting?

A. No, sir, I didn't.

Q. You didn't say that?

A. No, sir.

Q. So far as you know nobody said anything to them that suggested to them that they ought to leave the meeting?

A. That's right.

Q. All you know is that they got up and left?

A. That's right.

Q. Why, you don't know anything about it?

A. No, sir.

Q. You have told us, or told your counsel here where you went all the time during that evening and the next day and the next day. I will ask you whether or not about 9:00 o'clock that night or some time between 8:30 and 9:00 o'clock you saw Mr. Rich? You remember Mr. Irvin Rich that testified here the other day, don't you?

A. Yes, sir.

Q. The fireman?

A. Yes, sir.

Q. Rather large young man, blond, open-faced fellow?

A. I know him.

Q. You saw him Tuesday. You know him, don't you?

A. Yes, sir.

Q. I will ask you whether or not, you in company with Mr. Thomas, one of the Defendants here, Reese Thomas—you know Reese Thomas?

A. Yes, sir.

Q. And Mr. McCutcheon?

A. Yes, sir.

Q. Between the hours I have mentioned, 8:30 to 9:15, were in the Yard of the L&N Railroad on that Sunday night, October 23, and were going from the office down towards the roundhouse; from the Dispatcher's Office down to the roundhouse?

A. No, sir.

Q. Were you in that Yard that night?

A. No, sir.

Q. You heard Mr. Rich say that he saw you, didn't you?

A. I heard what he said, yes, sir, but it wasn't—

Q. It wasn't you?

A. No, it wasn't, I wasn't on the L&N property, I was across the street.

Q. You say you were over at Rex's?

A. Yes, sir.

Q. But I am asking you if you didn't go with McCutcheon and Thomas, Reese Thomas, on to the roundhouse, and then up through the Yard, and clear those people out of the Yard there that night?

A. No, sir.

Q. And that M. L. Hall, some went one way, and you three went some other way, that you went through that Yard hollering "Clean out the Yard", or "Get out of the Yard"?

A. I didn't see any of that.

Q. You didn't see any of them?

A. Not any of that, no, sir.

Q. You didn't see any of that?

A. No, sir.

Q. Did you see Mr. Irvin Rich there that night at all?

A. Yes, sir.

Q. Where did you see Rich?

A. In front of Rex's Barbecue.

Q. You didn't see him at all as he was coming out of the place over there in the Company's property, within the gates?

A. I didn't see him until he come in Rex's Barbecue.

Q. Did you go in the Company's property that night when you came down there?

A. No, sir.

Q. When you came back down there about what time was it?

A. Well, I stayed down there until about midnight.

Q. Well, when did you get there?

A. Sir?

Q. When did you get down there?

A. Down where?

Q. When did you get back after the meeting at your house, when did you go down to Rex's?

A. After the meeting at my house?

Q. Yes, sir.

A. I went straight to Rex's Barbecue.

Q. You went there and stayed until about midnight?

A. But I made a trip home in between times.

Q. How long were you gone home?

A. I was there long enough to eat supper.

Q. Were you there, around there, from 8:30 until 9:30?

A. Yes, sir.

Q. You were down at Rex's?

A. Rex's.

Q. You were there from 8:30 to 9:30?

A. Yes, sir.

Q. I will ask you whether or not when you came back after the meeting at your place, at any time between midnight that night, you went into the Company's property?

A. No, sir.

Q. You did not, you stayed on the Rex's Barbecue side of the Pinson Pike?

A. Yes, sir.

Q. But you do remember seeing Mr. Rich there that night?

A. Yes, sir.

Q. Now, did you know why the L&N Railroad was shutdown for those three days?

A. It was on account of labor trouble.

Q. Well, did you know what the labor trouble was about?

A. It was on—all I know about it is on account of those hostler helpers jobs being abolished.

Q. It wasn't any surprise to you that it was shutdown, was it?

A. Well now it was in a way, yes, sir. I thought it would be taken up through channels.

Q. You thought it would be taken up through channels?

A. Yes, sir, I did.

Q. Did you advocate taking it up through channels?

A. I didn't make any suggestion, I just give them a place to meet, that's all.

Q. You just furnished them a place to meet?

A. Yes, sir.

Q. You didn't vote one way or the other on this thing?

A. No, sir.

The Court:

Did they take a vote down there at your house that Sunday afternoon, Mr. Parker?

The Witness:

No, sir.

Q. You have heard Mr. Kennedy and these other gentlemen say that the vote was taken, didn't you?

A. Yes, sir.

Q. They are mistaken about that, are they?

A. Yes, sir.

Q. That did not happen?

A. There wasn't no vote taken.

Q. There wasn't any vote taken?

A. No, sir.

Q. No show of hands?

A. No show of hands.

Q. Did you see Mr. Brown and Mr. Anderson getting a list of pickets there at your house that afternoon?

A. No, sir.

Q. Did you see them ask for the people who wanted to volunteer for picket duty to hold up their hands?

A. No, sir.

Q. Did you see those two men make a list of the men that volunteered for picket duty?

A. No, sir.

Mr. Simpson:

That's all. Come down.

Mr. Pettus:

That's all.

The Court:

You are excused.

(Witness excused.)

Mr. Pettus:

Mr. Weldon.

J. M. WELDON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. J. M. Weldon.

Q. Where do you live, Mr. Weldon?

A. 3844 36th Avenue North.

Q. Are you one of the Defendants in this case?

A. Yes, sir.

Q. Are you a member of one of the Railroad Brotherhoods?

A. Yes, sir.

Q. Which one are you a member of?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. What is your job on the Railroad?

A. Locomotive Fireman.

Q. And what is your pay as a fireman, per day?

A. Well, we get paid different rates, on weight of drivers.

Q. What is the average per day?

A. On a switch engine it is $15.87.

Q. $15.87?

A. Yes.

Q. Did you attend this meeting at Mr. Parker's house?

A. Yes, sir.

Q. On Sunday afternoon?

A. Yes, sir.

Q. About what time did the meeting get underway?

A. I don't know. The meeting was underway when I got there. I didn't go—if there was a crowd gathered and went, I didn't see any of them. But I imagine it was around 4:15, 4:30. It was somewhere around 4:30 when I got there.

Q. Did you go to the meeting with anybody?

A. Yes, sir.

Q. Who did you go with?

A. Fred Edwards.

Q. How long did you stay at the meeting?

A. I imagine 15 to 20 minutes. maybe 30 or 40 minutes, I don't know.

Q. Did you leave at the same time Mr. Edwards left?

A. Yes, sir.

Q. What was the discussion at the meeting?

A. Well, it was pertaining to these hostler helpers.

Q. Did you take part in the discussion?

A. No, sir.

Q. Do you recall any of the statements that were made during the discussion; if so, who made them?

A. No, sir, they was milling around, talking, two or three different places, and I didn't hear anything that would register in my mind that I think would be important to remember.

Q. After the meeting where did you go?

A. I came back to Rex's Barbecue.

Q. Was Edwards with you then?

A. Yes, sir.

Q. About what time was it that you arrived at the Rex's?

A. I don't have no idea. It was before dark, between dark and sundown I would say. I don't have any idea what time it was.

Q. Did you stay at Rex's for some time, or did you leave?

A. I beg your pardon?

Q. Did you stay there for some time, or did you leave? How long did you stay there?

A. I don't remember whether—I went over to the roundhouse before I left the barbecue, parked my car at the barbecue and walked across over to the roundhouse. I don't remember whether I left then and went on home or not.

Q. About what time was it you went to the roundhouse?

A. Oh, I would say, it still wasn't dark, I believe it was beginning to get dusky dark when I went over there.

Q. Then after you went to the roundhouse did you go home, you say?

A. Yes, sir, the best I remember I went straight home, went on home.

Q. How long did you stay at home?

A. I don't know, maybe a couple or three hours.

Q. Did you go anywhere else later that evening?

A. Yes, sir.

Q. Where did you go?

A. I came back out to the barbecue.

Q. Do you know about what time you arrived the second time?

A. I would say it was around 8:00 or 9:00 o'clock, I don't know.

Q. 8:00 or 9:00 o'clock?

A. Yes, sir.

Q. How long did you stay there?

A. Well, off and on all night. I mean I would drive off and come back, wandering around.

Q. Did you go down to the Passenger Station any time that night?

A. Yes, sir, I went down there.

Q. Do you remember this colored man, Lee Thomas?

A. Yes, sir.

Q. Did you see him down there?

A. Yes, sir.

Q. Where did you see him?

A. Up at—under the passengers shed, up on the—at the Train Order Office.

Q. About what time of the night was that?

A. I imagine it was around 11:00 or 12:00 o'clock. I don't remember.

The Court:

Was that Sunday night or Monday night?

The Witness:

Sunday night.

Q. Was there anybody there at the same time that you saw Thomas?

A. Yes, sir, there was a gang of men standing around the Train Order Office there.

Q. Was there anybody at the engine when you saw him?

A. Yes, I think Mr. Ben Mitchell walked up to the engine and got on.

Q. Was Mr. Mitchell down at the station then?

A. Mr. Bailey was standing around there. I don't remember whether he got on the engine or not.

Q. Who was the engineer if you remember?

A. Mr. Hobart Parker.

Q. Did you have any conversation with Thomas then?

A. Not there, I don't think I did. I might have spoke to him, said something to him. I don't recall that I did.

Q. Now at that time or later did you take out a knife and display it to him?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Well, did you have any conversation with him at any time that evening?

A. Yes, sir.

Q. What was your conversation with him?

A. We got off the engine and I asked him, I said "Lee, have you got this brakes tied down and the main battery switches pulled on those engines?"

Q. What did he say to that?

A. He said "Yes, sir."

Q. Then did you have any further conversation with him?

A. Yes, sir.

Q. What was that?

A. Come on down, and he went to the telephone booth, and I told Hobart and them, I said "I've got a car, my car out here, I'll take you all home", or get somebody to take you home, my car was out at Rex's Barbecue at the time.

And I turned around, and he was in the telephone booth. I told him, I says "Lee, have you got a way home? If you haven't, I'll get you a way home now."

Q. Did he accept your offer?

A. He said "No, sir", said "Somebody would come after him."

Q. Did you take Mr. Parker home?

A. Yes, sir.

Q. Or arrange for him to be taken home?

A. Yes, sir.

Q. Where did you go after you left the Passenger Station?

A. Come on back out to Rex's Barbecue.

Q. How long did you stay there?

A. Well, off and on until about 5:30 or 6:00 in the morning, on Monday morning.

Q. And where did you go when you left at that time?

A. I went home.

Q. That was on Monday?

A. Yes, sir.

Q. Just state where you were the rest of Monday?

A. Home all day.

Q. Home all day?

A. Yes, sir. Well, maybe my wife and I taken a little ride somewhere, I don't remember where we went to. I don't think it was—I don't even know whether I even got in my car or not. I don't remember.

Q. How about Tuesday?

A. I stayed at home Tuesday—no, we went to the river Tuesday.

Q. Went to the river?

A. Yes, sir, we've got a cottage on the river, and we drove down there Tuesday.

Q. Wednesday, what did you do on Wednesday?

A. I believe I stayed at home.

Q. Did you do anything—of course, you didn't work at any time during this work stoppage, did you?

A. No, sir.

Q. Do you remember when you went back to work?

A. It was either on Wednesday or Thursday night.

Q. You haven't been paid for any of the time that you were not working during the work stoppage, have you?

A. No, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Simpson:

Q. Mr. Weldon, when did you first hear about the meeting at Parker's house, Shorty Parker's house?

A. I come in off the run, off the road about, oh, some time early Sunday morning, I would say around 2:00 or 3:00 or 4:00 o'clock in the morning, and I heard something about it around the roundhouse, somebody mentioned it.

Q. Did they tell you the place and time?

A. Shorty Parker's, Sunday afternoon; no time; Shorty Parker's is all.

Q. I believe you say you went down to Rex's Barbecue that afternoon?

A. Sunday afternoon, yes, sir.

Q. About what time did you go down there?

A. Well, I don't know, around 4:00 or 3:30 or 4:30, somewhere in that neighborhood.

Q. Did you take anybody or go by yourself?

A. I went to Rex's Barbecue by myself.

Q. And when you got down there did you then go on over to the meeting at Shorty Parker's house?

A. I went in and drank a cup of coffee, and they told me, somebody in there told me, said—I believe it was Mr. Rollins.

Q. I am not asking you what Mr. Rollins said. I am asking you if you went from there over to Mr. Parker's house?

A. Yes, sir, I went from there over to Mr. Parker's house.

Q. Did you take anybody?

A. Yes, sir.

Q. Who did you take?

A. Fred Edwards.

Q. Fred Edwards?

A. Yes, sir.

Q. You could be mistaken about who you took, couldn't you?

A. No, sir, I don't think so.

Q. You know that it was Mr. Fred Edwards?

A. Yes, sir.

Q. How long had you known Fred Edwards?

A. Well, since I have been back out of the Army I have seen him, almost. I knew him but I didn't know his name up until this, about a year ago, well right after the work stoppage.

Q. Mr. Fred Edwards was a conductor on the north end, wasn't he?

A. Yes, sir.

Q. And you know that it was Fred Edwards that you took?

A. Yes, sir, I know it was him I taken, yes, sir.

Q. And did you invite him to go or did he know about it?

A. He said they was having a meeting up there and asked me could he go with me.

Q. He asked you could he go up to the meeting with you?

A. Yes, sir.

Q. And you took him?

A. Yes, sir.

Q. Now, when you got up there to Parker's house did you see any of these—you saw this group of people, about 20, that had assembled up there, did you?

A. Yes, sir.

Q. And you went in and were in the meeting?

A. Yes, sir.

Q. Were you feeling all right?

A. No, sir, I wasn't.

Q. You were sick too?

A. I wasn't sick, but I hadn't slept any too much Sunday, you know. I've got a teen-age boy at home, and you know how the telephone gets with teen-agers on Sunday. The telephone is in my bedroom, and I didn't get enough sleep.

Q. You didn't stay up all night Saturday night, did you?

A. Well, I worked Saturday.

Q. Got in about 2:00 o'clock?

A. About 2:00 or 3:00 or 4:00 o'clock, somewhere along there.

Q. You went to bed and slept until the teen-ager got up the next morning, didn't you?

A. Well, he was up around about 8:00 or 9:00 o'clock.

Q. You stayed up all night Sunday night, didn't you?

A. Yes, sir.

Q. You just told us that?

A. Yes, sir.

Q. You didn't feel so bad but what you stayed up all Sunday night, did you?

A. No, I felt bad, but I stayed up.

Q. You stayed up?

A. Yes, sir.

Q. As soon as you left that meeting over there at Shorty Parker's house you went over and checked out, called up and checked out as sick, didn't you?

A. No, sir, I didn't call up, I went over there.

Q. You went over and checked out on Jordan's book that has been introduced in evidence here, and told him you were sick, didn't you?

A. I told him I wasn't feeling too good, and I had my mileage about in, and I wanted off.

Q. You knew Mr. Weldon that there was going to be a strike that night at 9:00 o'clock, and you didn't want to be mixed up in it, that's the reason you checked out, wasn't it?

A. No, sir, I wouldn't say I did.

Q. You wouldn't say you did?

A. If there was a strike I wouldn't work anyway.

Q. You say that wasn't your reason, that you checked out as sick there that night?

A. No, I just didn't feel good, and I had my mileage in, and that was the reason that I checked out.

Q. You hadn't intended checking out until you left that meeting?

A. Yes, sir, I told my wife when I left home to go to that meeting—

Q. You can't tell what you told your wife.

Mr. Pettus:

That is responsive to the question. Let him answer the question.

Mr. Simpson:

I didn't ask him what he told his wife.

The Court:

I sustain the objection.

Q. Were there any of these other men that were at that meeting that went over there and checked out along with you at the time you checked out?

A. No, sir, I went alone.

Q. You went by yourself?

A. Yes, sir.

Q. Did you do any picket duty during that strike?

A. No, sir.

Q. You didn't see any picket duty being done, did you?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Didn't go around where the entrances of this plant were?

A. I was around the Rex's Barbecue, in and out, around there, and all.

Q. You were around where those groups of men were standing around those entrances, weren't you? You were part of them?

A. Yes, first one and then another, yes, I was around the gate.

Q. You claim that wasn't picket duty?

A. There was nobody, I didn't see anybody hold any sign up, or tell nobody not to go in.

Q. Did I ask you if there was a sign held up?

A. No, sir, but I figured if you were asking about a picket—

Mr. Byrd:

We object to that as an argument.

A. —a man would have to have a sign.

Q. You say there is no picket duty unless a man has got a sign, is that your definition?

A. Well, I think so, yes, sir.

Q. So that men could be standing around there, asking people not to go in, and stopping the people from going in, but if he didn't have a sign he would not be doing picket duty, as you understand it, that's right, is it?

A. Well, so far as I know, yes, sir, so far as I would be concerned he wouldn't be.

Q. That wouldn't be picket duty?

A. No, sir.

Q. Why did you go down to the L&N station on that Sunday night?

A. I don't know, just merely riding around.

Q. Riding around?

A. Driving around, and drove down there.

Q. Did you get on that engine with Mr. Parker and this Negro Lee Thomas, that they brought in from Calera or Montgomery down to 18th Street?

A. Yes, sir.

Q. What were you doing down at 18th Street, mounting that engine? Did you have any duties on that engine?

A. No, sir.

Q. You had no duties on it. Who got on that engine with you?

A. I believe Mr. Ben Mitchell got on there with me.

Q. Who else got on there with you?

A. That's all I remember getting on there. I don't remember whether Mr. Bailey got on or not.

Q. Mr. Bailey?

A. Yes, sir.

Q. Did Mr. Bruce Barnett get on there with you?

A. No, sir.

Q. Did Bentley get on there with you?

A. No, sir.

Q. Who is Mr. Bailey?

A. That is the Engine Dispatcher.

Q. He is a Company man?

A. He was walking around there with me.

Q. But you mounted that engine down there at 18th Street right up in the Yard, up towards the station, didn't you?

A. That was in the station.

Q. At 18th Street?

A. At the Train Order Office. I rode to the other end and backed in the shed, backed in a track there, yes, sir.

Q. You can't tell us why you had gone down there to the L&N station that night except just to be riding around, is that right?

A. Yes, sir, I think—I went down there on that occasion, how come me down there, I went to ride in Charlie Schilleci's new Buick, and he happened to go down there, and I got out and he got ready to go, and I guess he just drove off.

Q. Didn't you tell us that you went down there that night to see Mr. Mitchell about putting in an application for an overseas job with the Republic Steel Company?

A. No, sir, I didn't say I went down there to see him. After I found out that he was up in the Passenger Station I went up to see him about it, yes, sir.

Q. You went up there to see Mr. Mitchell about getting a job with the Republic Steel overseas?

A. Yes, sir.

Q. Do you remember asking Mr. Edwards if he was a member of the Trainmen as you all left that meeting that night at Shorty Parker's house, that afternoon?

A. I don't know whether I did or not. It is possible that I did.

Q. You heard Mr. Edwards testify, you have been sitting in Court, hearing everybody testify, haven't you?

A. Yes, sir.

Q. You heard Mr. Edwards testify?

A. Yes, sir.

Q. I will ask you whether or not you asked Mr. Edwards as you were riding from Parker's house back to Rex's Barbecue if he was a member of the Trainmen and he told you he was?

A. I don't remember whether I asked him directly was he a member of the Trainmen or not.

Q. And did you then ask Mr. Edwards to call his Local Chairman and tell him you all were going to strike that night, either at 9:00 o'clock that night or 6:00 o'clock next morning, and tell the Trainmen that you all were going on strike?

A. No, sir, I don't think I told him that. I think I made the remark that the Local Chairman should be notified about it.

Q. About the strike?

A. Whatever it was going to happen, I didn't know what was going to happen.

Q. What did you tell him to notify the Local Chairman of the Trainmen about?

A. Well, he asked me, says "What would you do in my place?"

Q. About what?

A. I told him I would get hold of my Local Chairman and let him advise me what to do.

Q. About what?

A. If there was labor trouble.

Q. You knew then on the way back over there that there was going to be some labor trouble, didn't you?

A. I didn't know what it was going to be.

Q. You knew there was going to be a strike there at 9:00 o'clock that night, didn't you?

A. No, sir, I didn't know it.

Q. You told him to call his Chairman and tell him, and you went right on over and checked out, so

you wouldn't be mixed up in it? You checked out with the Engine Dispatcher, didn't you?

A. No, sir, I checked out—

Mr. Simpson:

Come down, Mr. Weldon, please, sir.

Mr. Pettus:

All right, you are excused.

(Witness excused.)

The Court:

Your next witness.

Mr. Taylor:

A. R. Thomas.

A. R. THOMAS, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Is this Mr. A. R. Thomas?

A. Yes, sir.

Q. Generally referred to as Reese Thomas, is that correct?

A. That's right.

Q. What is your occupation with the L&N, Mr Thomas?

A. Fireman, Engineer, Hostler.

Q. What was your occupation on October 23, 1955?
A. I was a Hostler.
Q. Hostler?
A. Yes.
Q. Mr. Thomas, will you explain to the Court and jury the duties of a hostler on October 23, 1955?
A. Well, it is—

Mr. Simpson:
May it please the Court I object to it as being immaterial. I think we have been over that with a number of witnesses. It is repetitious.

The Court:
Overruled.

Mr. Simpson:
All right, sir.

The Court:
We can't keep going over this.

Mr. Taylor:
All right.

Q. Just briefly explain it.
A. Get engines out of the roundhouse or either off of the lead after they come in, and work them up preparatory to going out again, fuel them, see that they are fueled and supplied, couple or uncouple, in groups of from one to four, when there is four of them. There is 201 feet of it.
Q. All right, does the hostler's helper, or does the hostler ever take an engine across a railroad crossing?

A. Oh, every time you go to town you cross numerous railroad crossings.

Q. Just briefly if you will describe on October 23, 1955 the duties of a hostler's helper with respect to the safety of the engine?

Mr. Simpson:

We object to that as immaterial. We are not trying a question here of whether or not the Railroad Company was right or wrong about abolishing the outside hostler helpers jobs.

The Court:

I sustain the objection.

Q. I will ask you this question, prior to the abolishment of the hostler helpers jobs, when you crossed a railroad crossing was there a responsibility on the hostler helper to watch out for one side of the engine?

Mr. Simpson:

We object to that.

The Court:

I sustain the objection as repetitious.

Mr. Taylor:

All right, sir.

Q. Who was your hostler helper on Saturday, October 22?

A. C. L. McCutcheon.

Q. Did you learn that the Railroad proposed to abolish the craft of hostler helper?

A. I learned—

Mr. Simpson:

We object to that because it is not the hostler helper that is abolished, it was the outside hostler helper. They didn't abolish the hostler helpers.

The Court:

Do you have reference to the outside hostler helpers?

Mr. Taylor:

Outside hostler helpers, yes, sir.

The Court:

I overrule the objection.

Q. The Judge says you can answer.

A. It was the outside hostler helpers jobs that was abolished.

Q. Yes, sir. Did you receive any information that the Railroad proposed to abolish those jobs?

A. I learned about it when they put a bulletin up prior to that date, several days, that they intended to pull them off.

Q. All right, that was about the 19th of October, is that correct?

A. Something like that.

Q. Was that bulletin posted in a public place there in the L&N premises?

A. It was posted on the regular bulletin board that everybody is supposed to read every day.

Q. And it remained up there from the date it was posted, is that correct?

A. Yes, sir.

Q. So far as you know?

A. So far as I know it was.

Q. Did you hear any discussion about the intention of the Railroad to abolish those jobs after that was posted?

A. Well, it was discussed freely by everybody going in and out of the washroom that happened to see it.

Q. And was that washroom used by all crafts of the employees out there?

A. It is used by all the switch engine crews, mostly by them, 90 per cent of the switch engine crews, all of the pool men, and all of the freight men.

Q. And you say there was general discussion about the Railroad's intention, is that correct?

A. Well, to abolish a job that had been on 30 or 40 years, it created quite a bit of it.

Q. Now, did you work on Sunday preceding the work stoppage?

A. Sunday preceding that?

Q. Yes.

A. That would be a week prior to that?

Q. Well, I mean on Sunday, October 23, the day that work stoppage occurred that night?

A. I was supposed to go to work at 11:00 o'clock.

Q. That night?

A. That's right.

Q. The last time you worked with your shift was on Saturday night before that?

A. Yes, sir.

Q. Is that correct?

A. Saturday night, that's right.

Q. Now, Mr. Thomas, did you attend the Union meeting on Friday night which has been discussed?

A. I did not.

Q. You were not present?

A. I did not.

Q. Were you present when this group gathered on the sidewalk after the meeting was over?

A. No, sir, I wasn't even there.

Q. You were not there?

A. No, sir.

Q. Now, did you hear later about a gathering at Mr. Parker's home to be held on Sunday afternoon?

A. McCutcheon told me about it when I picked him up that night at his house going to work.

Q. Was that the first you had heard about the meeting?

A. That's the first I knew of the meeting.

The Court:
Was that on Saturday night?

The Witness:
No, Friday night, Judge.

The Court:
Friday night?

The Witness:
Friday night, yes, sir.

Q. Friday night is the first time you heard about it?

A. Yes, sir.

Q. Now, Mr. Thomas, as of Sunday, October 23, had those hostler helpers jobs been abolished at that time? Was it definite that they had been abolished?

Mr. Simpson:
We object to that. We have been over that many times here.

The Court:
Overruled.

A. Nobody could believe it would happen until it did happen.

Mr. Simpson:
We object to what they believed would happen.

The Court:
I sustain the objection.

Mr. Simpson:
I move to exclude it.

The Court:
That is excluded, gentlemen.

Q. Had it actually happened at that time, as of Sunday afternoon?

A. It happened at 3:00 o'clock Sunday afternoon.

Q. I will ask you did you attend the meeting at Mr. Parker's house?

A. I did.

Q. About what time did you go over there?

A. It was between 4:00 and 4:30.

Q. How did you get there, Mr. Thomas?

A. I went in my car.

Q. Did anybody go with you?

A. McCutcheon and Fleming.

Q. Were there any other people there when you arrived?

A. There was a group of men standing outside. 15 or 20 of them.

Q. The testimony has been offered several times about who was there. I will just ask you if the people who have been identified as being at that meeting were there according to your recollection?

A. You mean for me to identify the ones that were there, or just substantiate the ones they have already said were there?

Q. Was the testimony about the people being there substantially as you recall it?

A. Yes. There was another craft represented there though.

Q. Who was that?

A. That wasn't mentioned.

Q. Who was that?

A. The Brotherhood of Locomotive Engineers.

Q. You say that craft was represented?

A. There was a member of that organization there.

Q. Did anybody take charge of that group of people outside of the garage?

A. They was split up into several small groups, discussing different things I presume, as I was.

Q. Did you then move into the interior of the garage?

A. Along around 4:30 we went in.

Q. Was there anybody that you would say was in charge of that meeting?

A. There was no one specific.

Mr. Simpson:

We object to the conclusion whether anybody was in charge of it or not.

The Court:

Overruled.

A. There was no certain one in charge of it.

Q. Now, what was the subject matter that was discussed in your presence and hearing when you got inside of the meeting?

A. Well, we couldn't—I couldn't—I could only speak for myself. I couldn't believe that they would abolish the jobs—

Mr. Simpson:

We object and move to exclude it.

A. —until they did abolish them.

The Court:

Sustained. That is excluded, gentlemen. That answer is excluded.

Q. Just restrict it to what you said, Mr. Thomas, and not what you thought. If you said that, you may say it I presume the Judge means.

A. I said it was a shame that a man worked all his life to get a job like that, and then see it just, the whole craft abolished overnight.

Q. Was there any discussion there with reference to what you hostlers were going to do without the use of an outside hostler helper?

Mr. Gibson:

We object to leading him.

A. I didn't get the question.

Q. I asked was there anything said there about what the outside hostlers would do without the services of a hostler helper.

The Court:
I sustain the objection.

Mr. Taylor:
I am asking him if that statement wasn't made at the meeting.

Mr. Gibson:
Leading and suggestive.

The Court:
There is a question of the materiality of the statement.

Mr. Pettus:
Can't we bring out everything that occurred at the meeting? They have been permitted to go into everything that has been said, and we think we are entitled too.

The Court:
There are bound to have been some things that took place at the meeting that were not material, I assume.

Mr. Taylor:
The theory of it that I have is to show the reason for having the meeting, and that it was not any sinister plan to close up the Railroad, that it was a legitimate excuse, it is a part of the welfare of the job. I offer it on that basis.

Mr. Gibson:
We object to leading and suggesting. If they want to put it in, let the witness do it.

The Court:
I sustain the objection to the form of the question.

Q. You have stated, or testified here, you have stated about it being a shame. Did you make any other statement as to these jobs to the people that you talked to?

A. I went to the meeting primarily to find out what to do without a hostler helper.

Mr. Simpson:
We object.

The Court:
I sustain the objection.

Q. Don't state what the purpose was.

The Court:
I will exclude it.

Mr. Simpson:
I would like to say again that we are not trying the issue here of whether or not the L&N was right or wrong in taking off the outside hostler helpers. We don't understand that to be the issue here. The issue is whether or not they closed up the L&N Railroad over that; whether it was a good or bad issue, we object to trying that issue.

The Court:
I sustain the objection.

Q. Don't state what your intention was, Mr. Thomas. I just asked you if you can recall it, if you said anything along those lines.

A. You mean stated to the whole group?

Q. Did you make it to anybody there, not necessarily the whole group, if you made that statement to anybody there.

A. I said I would be glad to know what to do without a helper on an engine.

Q. Now, without repeating the testimony that has been offered about taking this matter up through channels, was there any firm conclusion reached at that meeting?

Mr. Simpson:

We object to "firm conclusion."

The Court:

I sustain the objection as to the form of the question.

Q. Did you agree with anybody to do any certain thing at that meeting?

A. I agreed with Otts that there was nothing that could be done except go out without a helper for the time being.

Q. And did you hear the statement made about taking the matter up through channels?

A. Mr. Otts said that he had a letter from Mr. Paschal informing us, which I didn't know anything about, that the only way that we—the only thing that we could do was to just let it go through proper channels, and he would handle it.

Q. Did you offer any disagreement with that statement that Mr. Otts made?

A. I had no reason to.

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No. 912

VOLUME III.

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,632

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Appellant.

versus

J. M. BROWN, JR., ET AL.,
Appellees.

Appeal from the United States District Court for the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR 22 57)

The Court:

Gentlemen, we are going to recess until 1:30.

(Whereupon, at 12:15 p. m. a recess was taken until 1:30 p. m., of the same day.)

Afternoon Session, 1:30 P. M.

A. R. THOMAS, the witness on the stand at the time of recess, having been previously sworn. resumed the stand and testified further as follows:

Direct Examination

By Mr. Taylor:

Q. Now, Mr. Thomas, I believe we were talking at the noon recess about a meeting at Mr. Parker's house on Sunday afternoon.

A. Yes, sir.

Q. Did you tell anybody at that meeting or instruct anybody at that meeting to forcibly prevent any L&N employees from going to work?

A. I did not.

Q. Did anybody tell you to forcibly prevent any L&N employees from going to work?

A. No.

Q. About what time did the meeting break up?

A. I would say around 5:15 to 5:20, something like that.

Q. Do you remember whether you were one of the first to leave or the last to leave?

A. I went out in the group with the rest of them. I don't know whether I was first, last or middle.

Q. Speak a little bit louder so everybody can hear you.

A. All right.

Q. Now, where did you go when you left the meeting?

A. I took McCutcheon home.

Q. In your automobile?

A. In my automobile.

Q. Then where did you go?

A. I went home.

Q. Did you have any occasion to contact Mr. McCutcheon later that evening?

A. Well, he told me he might lay off because he was figuring on going to work as a laborer in the shop next morning at 7:00 o'clock, and therefore he may not work. So I called him around, I guess 5:45 or 5:50, somewhere around in there, and asked him was he going to work, and he said no, he had called the roundhouse to lay off, and Jordan said why—

Mr. Simpson:

We object to that as hearsay, what Mr. Jordan said.

The Court:

I sustain the objection.

Q. What did you do then, if anything, after you talked to Mr. McCutcheon?

A. I called up and laid off.

Q. Who did you talk to?

A. Mr. Jordan.

Q What did you tell Mr. Jordan?

A. I told him to mark me off sick.

Q. Did Mr. Jordan say anything to you when you told him that?

A. He said there had been a lot of other men laid off.

Q. Speak up a little louder.

A. All right.

Q About what time was it that you called in and rep ted sick?

A. It was around pretty close to 6:00 o'clock.

Q. Did you stay at home the rest of the evening or did you leave?

A. I went to pick up McCutcheon after he asked me to, to go down there and see what was wrong at the roundhouse.

Q. Where did you go?

A. I picked McCutcheon up around 8:00 o'clock.

Q. Around 8:00 o'clock?

A. Yes, sir.

Q. Where did you go with Mr. McCutcheon, if anywhere?

A. We went to the roundhouse, Rex's Barbecue across from the roundhouse.

Q. All right, sir, how long did you stay at Rex's Barbecue?

A. Oh, we got out of the car, and everything was quiet across the street, and Mack said "Will you go with me to get my clothes out of my locker?"

Q. At that time did the situation inside of the Yards appear to you as it always would, or normally would at that time of the day or night?

A. Everything was shutdown, there wasn't an engine running.

Q. What time was this?

A. It was about 8:20 I imagine 8:15, somewhere around there.

Q. I believe you stated that you went into the Yard?

A. Yes; sir.

Q. Who was with you at that time?

A. McCutcheon.

Q What was the occasion of you going into the Yard at that time?

A. He had some, his work clothes, in his locker.

Q. Will you tell the jury, please, what entrance or gate that you entered the Yards with Mr. McCutcheon?

A. I entered what is known as the Rex's Barbecue entrance to the washroom.

Q. Was there anyone with you but Mr. McCutcheon?

A. That's all.

Q. What route did you take in getting to the washroom?

A. I went directly across the bridge, around the right side of the building, and turned back to the left, right into the front of the washroom.

Q. Is that the most direct route to the washroom from where you entered?

Mr. Simpson:

We object to that, leading and suggestive.

The Court:

Sustained.

Q. Did you see anybody while you were walking up to the washroom with McCutcheon?

A. Not a soul.

Q. Sir?

A. Not a soul

Q. Was it dark then around there?

A. It was pretty dark. The lights was still on at that time, but you was still in the shadows throughout the place.

Q. Now, did you talk to anybody except Mr. McCutcheon while you were going in there to the washroom?

A. I didn't go in with McCutcheon.

Q. While you were going to the washroom did you talk to anybody besides McCutcheon?

A. I went to the door of the Engine Dispatcher's Office and stood there talking to Jordan a while, while Mack got his clothes out.

Q. Is that the same Mr. Jordan that you just testified you called over the telephone a short time before?

A. That's right.

Q. How long did you stay there at the window of Mr. Jordan's office?

A. About five minutes, not much longer, if any; less than ten I'm sure.

Q. Do you know, or could you see what Mr. McCutcheon was doing while you were standing there talking to Jordan?

A. I couldn't see what he was doing.

Q. Then did McCutcheon join you after he got his stuff packed up?

A. He came out with an arm load of clothes, and I got down off the steps and went around what you might call the right side of the building going out there with McCutcheon back towards Rex's Barbecue.

Q. What did you and McCutcheon do when you got back together there, if anything?

A. Some switchmen up there in the cab track hollered and asked us what was going on down there, and we said "Nothing, not anybody working down here", and we went on across the street.

Q. You walked on out the footbridge?

A. That's right.

Q. Approximately what time was that, if you recall, what is your judgment of it?

A. Well, it was 8:30, maybe 8:35, something like that.

Q. All right, where did you go then. Mr. Thomas?

A. Went back to the Rex's.

Q. Did you stay in the vicinity of the Rex's Barbecue all that night then?

A. I stayed there until about 9:00 o'clock the next morning.

Q. Did you go about any of the entrances of the L&N Yards that night later on?

A. I did not.

Q. Now were there many or few people around Rex's Barbecue at that time?

A. During the course of the night there was approximately a thousand people or more that came in that vicinity.

Q. You don't mean at one time?

A. During the course of the night.

Q. During the course of the evening?

A. Yes, sir.

Q. Did you see people from all crafts on the railroad down there?

A. All crafts, officials included.

Q. What time did you leave Rex's Barbecue, or the vicinity of Rex's Barbecue that morning?

A. Around 9:00 o'clock somebody approached me and said Otts had been called into a conference in

Birmingham. I don't remember who it was, but it was around 9:00 o'clock. And I assumed, I assumed that he was being—

Mr. Simpson:
We object to what he assumed.

The Court:
Sustained.

Q. Just state what you did Mr. Thomas.
A. I went to town to see—
Q. Now, before we leave that, between the hours of 7:00 a. m. and 9:00 a. m. on Monday morning did you go around the Master Mechanic's gate of the Yard?
A I did not.
Q. Sir?
A. I did not.
Q. Did you go around the powerhouse gate between 7:00 and 9:00 on Monday morning?
A. I did not.
Q. Did you see Mr. Ben Mitchell at either the Master Mechanic's gate or the powerhouse gate or any other gate between 7:00 and 9:00 on Monday morning?
A. I did not.
Q. All right now you testified that at approximately 9:00 a. m. on Monday you left and went to town. Where did you go?
A. I went to the Superintendent's entrance.
Q. Of the Passenger Station?
A. That's right.
Q. Who did you see, if anybody, when you got down there?

A. Mr. Camp was the first man that I saw.

Q. Did you have any conversation with Mr. Camp?

A. I asked him was Otts upstairs

Q. What did he tell you?

A. He said not to his knowledge, there wasn't anyone up there but two men.

Q. Will you speak a little louder?

A. He said to his knowledge there wasn't but two men up there.

Q. Did he tell you who those two men were?

A. Yes. sir.

Q. Who were they?

A. Mr. Kirchner and Mr. Parsons

Q Did he tell you anything else about those two men?

A. Yes, sir.

Q. What did he say?

A. He said they were in a constant conference with Louisville, to see about settling this thing, and didn't want to be disturbed.

Q. Now, you mentioned Mr. Camp?

A. Yes, sir.

Q. Who is Mr. Camp, what is his occupation, if you know?

A. He is Chief Police Inspector for the L&N Railroad.

Q. Where did this conversation with Mr. Camp take place?

A. Directly in front of the Superintendent's door.

Q. Approximately what time was this according to your best judgment?

A. I would say around 9:15.

Q. About how long did you stay at or in the neighborhood of the Superintendent's door?

A. About an hour or an hour and fifteen or twenty minutes, maybe a little longer or less.

Q. Did you see Mr. Claude Johnston down there?

A. He came up at some time during the time that I was there.

Q. Did you have any conversation with him?

A. Yes I talked to him particularly.

Q. What did you talk to him about?

A. I asked him was his men working, and he said they were straggling in from here and there and yonder.

Q. Did you see any other officials of the L&N Railroad while you were there on Monday morning?

A. I saw Ben Mitchell.

Q. About what time did you see him down there?

A. I don't remember when he came up. I believe it could have been around 10:00 o'clock.

Q. Did you have any conversation with Mr. Mitchell around there?

A. I asked him where he was going.

Q. What did he say?

A. He said he was going upstairs to see Mr. Kirchner or Parsons, I don't remember which.

Q. Did you reply to him?

A. I told him that Mr. Camp said that they didn't want to be disturbed.

Q. Was Mr. Camp out there?

A. He was standing right there.

Q. Did Mr. Mitchell say anything else to you then?

A I don't remember whether he did or didn't.

Q. Now, Mr. Thomas. on this occasion that you are testifying about, did you touch or push Mr. Mitchell?

A. I did not.

Q. Did you have any physical contact with him in any way?

A. No.

Q. Did you threaten him?

A. No.

Q. Did you tell him he couldn't go up those stairs?

A. Certainly not.

Q. How long did Mr. Mitchell stay around there?

A. He may have stayed there five minutes or ten minutes; no longer.

Q. All right. Did you see any other people down there or have any conversation with them that you recall, whether you knew their occupation or not?

A. I believe there was two more men came up during the time that I was there.

Q. Did they have any conversation with you or you with them or in your presence or hearing?

A. One of them approached me directly and asked me who to see about some insurance papers. I told him there wasn't anybody upstairs but the Superintendent and Assistant Superintendent, and the Chief of Police standing there says that they didn't want to be disturbed, and Mr. Camp wrote him out somebody's address to go to see, to see about the papers.

Q. Did he leave then?

A. He left then.

Q. Was there any other man that you talked to about anything there that morning?

A. Some other man came up and asked the same question. I believe he asked Mr. Camp, he didn't ask me. And Mr. Camp wrote out something and gave it to him, about the same thing, insurance papers.

Q. Did you physically block that doorway that morning, Mr. Thomas?

A. Not physically. As you phrase it, I might have happened to be standing in it, but if I was in anybody's way, I would get out of their way. I wasn't standing there deliberately to stop anybody from going in.

Mr. Simpson:
We object to any voluntary explanation as to why he wasn't physically blocking it.

The Court:
Sustained.

Q. Did you prevent anybody from going in that door?
A. I did not.
Q. I didn't get your answer.
A. I did not.
Q How were you dressed this morning?
A. Had on these same pants and a blue sport heavy wool shirt.
Q. Now did you have on a jacket too?
A. Not there. I did not.
Q. To the best of your recollection what time was it when you left the vicinity of the Superintendent's office?
A. It was around 10:30, maybe 10:45; no later than that I am sure.
Q. Speak up Mr. Thomas.
A. No later than 10:45.
Q. I can't hear you.
A. No later than 10:45 at the latest.
Q. Where did you go then?
A. I went back towards Inglenook, towards the roundhouse. In going through Inglenook Bruce Bar-

nett hollered at me, and I stopped and picked him up.

Q. Where did you go then with Mr. Barnett in your automobile?

A. Barnett said "Let's go down to the Master Mechanic's gate and see if there's anything going on down there."

Q. Did you go down to the Master Mechanic's gate?

A. We did.

Q. What did you see when you got down there?

A. The gate was locked, not a soul in sight.

Q. Did any other automobile come up while you were there?

A. Mr. Mitchell and Mr. Woelde came up shortly after we did.

Q. All right, did you see any other automobile besides yours and the one Mr. Mitchell and Mr. Woelde were in?

A. Later on I saw one parked across the street, approximately 75 feet away from us.

Q. Do you know who was in the other car?

A. I recognized one of the men sitting on the driver's side.

Q. Who was that?

A. That was Mr. C. S. Hawkins.

Q. Where was your car parked in relation to the Master Mechanic's gate?

A. My car was parked directly in front of the gate.

Q. Did you have any conversation with Mr. Mitchell or Mr. Woelde when they came up?

A. Mr. Mitchell got out of the car. Mr. Woelde was driving. Mr. Mitchell got out and came around there, by the side of the car where I was, and said

he was going in there to see about some meat or livestock or something.

Q. What did you tell him?

A. I told him if he found any livestock in there to let me know, and I would go in there and feed it, or move it where it could be fed and watered.

Q. Did you state to Mr. Mitchell that you would let him go in there and stay 30 minutes, that if he wasn't out in 30 minutes you would come after him?

A. I wouldn't hardly tell an official that.

Mr. Simpson:

We object to that. whether he would or wouldn't.

Q. I realize you wouldn't—

The Court:

Sustained.

Mr. Simpson:

That's not the question.

Q. I realize you wouldn't, but I asked you did you say that or anything in substance that?

A. Certainly not.

Q. Speak out so they can hear you.

A. No, I did not.

Q I believe you testified that the gate was locked.

A. When I moved my car away from it he fumbled around, unlocking it. I don't know whether it had a lock or chain or snap or what on it.

Q. Did you move your automobile?

A. I did.

Q. Did Mr. Mitchell and Mr. Woelde drive in?

A. Mr. Woelde drove in with Mr. Mitchell.

Q. You could see inside of the Yards from where you were parked, could you not?

A. Not very much of it.

Q. Well, from what you could see did you see any work going on in there?

A. I saw all of the shops, the car shop, and one end of the Yard, and there wasn't any activity or anybody in there.

Q. Do you have any judgment as to how long Mr. Mitchell and Mr. Woelde stayed in there?

A. I would guess 20 or 30 minutes.

Q. Did you have any conversation with them when they came out?

A. I don't remember whether I did or didn't.

Q. Do you know Mr. Jody Johnson?

A. Yes, sir.

Q. Do you know both little Jody and big Jody, or young Jody and old Jody?

A. I know them both very well.

Q. Were either one of them in that vicinity that morning?

A. They positively were not.

Q. All right sir. How long did you stay in the vicinity of the Master Mechanic's gate after Mr. Mitchell left?

A. I left shortly after they did, maybe five minutes or less.

Q. Where did you go then?

A. I went back to the Rex's.

Q. How long did you stay around the Rex's that Monday?

A. I stayed there until 4:00 o'clock the next morning.

Q. 4:00 o'clock the next morning?

A. Yes.

Q. Between the time you got back to Rex's after you left the Master Mechanic's gate, at 4:00 o'clock next morning, did you go back to any of the entrances of the L&N Railroad at the Boyles Yard?

A. I never left the vicinity of Rex's until 4:00 a. m. next morning.

Q. Where did you go then?

A. I went home.

Q. I guess you went to bed, didn't you?

A. I certainly did.

Q. All right now what did you do Tuesday?

A. I stayed at home. in bed.

Q. All day?

A. All day.

Q. How about Tuesday night?

A. I stayed at home that night, in bed.

Q. How about Wednesday?

A. I got up around 10:00 or 11:00 o'clock.

Q. Where did you go, if any place?

A. I went back over in the vicinity of the Rex's.

Q. How long did you stay over there on that occasion?

A. I stayed there until about 5:15 that evening, when my wife picked me up.

Q. Where did you go when she picked you up?

A. I went home.

Q. Did you go out anywhere Wednesday night?

A. I did not.

Q. Did you stay at home all evening Wednesday night?

A. That's right.

Q. When did you learn, if you did learn, that the work stoppage had been settled?

A. Next morning, Thursday morning, my wife went up to the corner and got a paper, and it was in the paper.

Q. Was that the first knowledge that you had that the walkout was in fact settled?

A. That's right.

Q. When did you next go back to work for the L&N Railroad?

A. I believe it was Thursday night, I am not sure of that.

Q. Now, Mr. Thomas, there has been some testimony here about a discussion about having some signs painted. Did you have a discussion about having some signs painted?

A. I did.

Q. When did that discussion occur?

A. Saturday morning, at approximately 3:00 o'clock.

Q. What was the occasion for that discussion?

A. Mr. Otts was called south at 5:00 o'clock, and he asked me would I get some picket signs printed.

Q. Did you know at that time whether or not the strike would be called?

A. I did not.

Q. If a strike is called, is it customary that you display picket signs, notifying the public of what the grievance is about, isn't that right?

A. That's right.

Q. Did you make arrangements then to have signs made?

A. I did.

Q. When did you do that?

A. The next morning. I knew—I passed a sign shop going home every morning, and I knew the sign shop was there, so I stopped in an asked the man would he print me up a few picket signs.

Q. All right. Did you receive those signs from the sign shop?

A. I did.

Q. What did you do with them?

A. I throwed them in the back of my car.

Q. Were those signs ever displayed at any time during this work stoppage?

A. I didn't see any displayed, and I didn't display any, and I didn't give anybody, any one tc anyone to display.

Q. Were those signs shown to anybody at the meeting at Mr. Parker's house?

A. No, sir, they were never taken out of my car.

Q. Were those signs ever used by you in any way?

A. Not by me, no. sir, or anyone that I know of.

Q. Now during the period of this work stoppage did you direct any person to physically prevent any other employee from going to work?

A. No, sir.

Q. Did anyone instruct you to prevent any L&N employees from going to work during this work stoppage?

A. They did not.

Q. Who replaced Mr. McCutcheon as your helper, Mr. Thomas?

A. A nigger, Al Smith.

Q. What is his job classification?

A. Laborer.

Mr. Taylor:

I believe that's all. Answer these gentlemen's questions, Mr. Thomas.

Cross Examination.

By Mr. Simpson:

Q. You say over at Parker's house that afternoon there was more there than the firemen?

A. I didn't understand your question.

Q. There were people there who were not firemen?

A. That is correct.

Q. You mentioned some, I believe you say Mr. Southerland was there?

A. Yes, sir.

Q. Isn't he a fireman?

A. He is a fireman, but he don't belong to the Firemen.

Q. He belongs to another Brotherhood, doesn't he? He belongs to one of the Brotherhoods, Railroad Brotherhoods, doesn't he?

A. He belongs to the Brotherhood of Locomotive Engineers.

Q. That is a Railroad Brotherhood, one of the five Railroad Brotherhoods, isn't it?

A. That is debatable.

Q. Debatable?

A. To me, of course.

Q. What do you mean, debatable to you?

Mr. Taylor:

We object to that, arguing with the witness.

The Court:

Sustained.

Q. Isn't that a Union of Railroad Engineers?

Mr. Taylor:
We object to that as argumentative.

Q. And other employees?

Mr. Taylor:
Just a minute, Mr. Thomas. We object to that, may it please the Court.

The Court:
I overrule the objection, as to whether or not the Union he refers to is a member of the Brotherhood.

Mr. Simpson:
Well, I don't think it is important.

Q. You say Mr. Southerland was a fireman, do you?
A. That's right, he was a fireman. but he didn't belong to the Firemen.
Q. He belongs to the Engineers Union?
A. He belongs to the Engineers Union.
Q. But he was a fireman and working over there as a fireman at the time?
A. That is correct.
Q. Now you say that Stuart and Edwards were there also, were they, Stuart and Edwards?
A. I know now who they were.
Q. You didn't know them at the time?
A. I had seen them but I didn't know their names.
Q. Did you tell Southerland, did you tell Mr. Southerland there at that meeting, or during the course of that afternoon, that you wanted him to

tell—you wanted him to tell Mister—do you know Mr. Parrot?

A. Yes, I know him—engineer?

Q. Engineer Parrot.

A. Yes, I know Mr. Parrot.

Q. Do you know Mr. Laney?

A Yes, I know him.

Q. Who is Mr. Parrot?

A. He is an engineer.

Q. Who is Mr. Laney?

A. He is an engineer.

Q. Does he hold any office in the Engineers Organization?

A. He is Local Chairman of the Engineers.

Q. Local Chairman?

A. Yes.

Q. Did you send any word to Mr. Laney by anybody there Saturday morning before that strike started?

A. I did not.

Q. Did you tell Mr. Southerland or anybody else to tell Laney, I mean to tell Parrot not to let Laney keep him on the job this time, when this strike happened, you didn't want him working?

A. I did not.

Q. Did you send any word to Mr. Parrot?

A. I did not.

Q. By anybody?

A. I did not.

Q. Did you send any word to Mr. Laney about not keeping anybody on the job when this strike started there, that word, Saturday morning?

A. I don't even converse with him through anybody else?

Q. You don't converse with who through anybody else?

A. Laney.

Q. Did you converse with him directly?

A. Nor directly.

Q. Nor directly. In other words, you just don't converse with Laney?

A. That's right.

Q. Well now, you had a meeting you say there at Mr. Parker's? That was a meeting, wasn't it? It was called a meeting?

A. If you call a group of men getting together to discuss their problems, it was a meeting.

Q. Well, it was called to discuss what?

A. To discuss what was going to happen to the hostlers that have to go out in the Yard without a helper on the engine, and what to do, if anything, to get the jobs restored.

Q. Well, you were called over there to see what you could do about getting the job restored. weren't you?

A. That among other things.

Q. That was the purpose. There didn't anybody need to tell you what you had to do as a hostler when you were working as a hostler, whether you had a helper throwing your switch around the roundhouse, or whether you had a herder throwing the switch, or who was throwing the switch; there didn't anybody have to tell you that. did they?

A. We met—

Q. You met over there to get these jobs put back, didn't you?

A. Somebody had to tell me whether or not to go out in that Yard without a helper.

Q. Well, you had an engine foreman over there to tell you that, didn't you?

A. My actions as a working man on the Railroad was governed also by the dictates of our constitution and our agreement.

Q. That was Mr. Otts, wasn't it? He is your Local Chairman?

A. I hadn't had a chance, nor 150 more men hadn't had a chance to discuss what to do without a helper.

Q. There weren't any 150 hostlers out there, were there?

A. Every qualified fireman on the main line is a hostler.

Q. How many hostlers were there working out there, how many hostlers jobs were there?

A. Let's see, two on each shift is six jobs.

Q. Six jobs?

A. That's right.

Q. Six hostler jobs?

A. That's right.

Q. How many inside hostlers helpers jobs were there?

A. None.

Q. How many were there then?

A. None.

Q. There were no inside hostler helpers?

A. There is no such thing.

Q. Who did that work inside?

A. There is no such thing as an inside helper.

Q. Who threw the switches?

A. There is no such thing as an inside hostler helper.

Q. I say who did the work that the hostler helper did when you were in the roundhouse?

A. Laborers done it with—

Q. Laborers had done it from the beginning, hadn't they?

A. Laborers done it with the inside hostler.

Q. That's right, the inside hostler. Now then, the outside hostler had what they called an outside hostler helper?

A. That's right. covered by the Firemen's agreement.

Q. There was one job of that kind, that is three shifts with one man each?

A. That's right.

Q. There was one job called an outside hostler helper, wasn't there?

A. That's right.

Q. And that is what this dispute was about?

A. No.

Q. About that one job that ran through three shifts? And that outside hostler helper only assisted the hostler when he brought the engine down outside of the Yard, didn't he?

A. He assisted the hostler inside of the Yard, from as far away as the top of Red Mountain to the Yard limits.

Q. But he only, on all engines that were not going outside of the Yard, they had laborers to do that, assisting the hostler?

A. They still do.

Q. They still do. That had been the rule there throughout the years, hadn't it?

A. With the inside hostler.

Q. With the inside hostler?

A. Yes, sir.

Q. And who throws the switches on these engines when they are brought out of the Yard?

A. The herder.

Q. The herder?

A. Yes, sir.

Q. Now the herder is a switchman that has been promoted to conductor's status, isn't he?

A. That's right.

Q. He is more than an ordinary switchman, he is an experienced switchman that has been given the job of conductor or foreman, isn't he?

A. Not mechanically examined.

Q. Well, whatever sort of examination he had. In other words, he has been promoted above the ordinary switchman's job. And the herder now throws those switches?

A. That's right.

Q. On these engines that come downtown. All right, and the laborer, the man who had been helping on the engines around inside, helping the hostler around the roundhouse, had always been a laborer's classification, and the only change that was made was that the laborer now helps on that engine, even though it is going outside of the Yard, that's right, isn't it?

A. The laborer doesn't go outside.

Q. I say he doesn't go outside, but he helps get the sand in it, to get the fuel in it, just like the laborers had been doing throughout the years out there on the engines that were not going outside of the Yard?

A. No, it's not like it.

Q. I mean outside of the roundhouse, that's correct, isn't it?

A. No, the situation is entirely different.

Q. It is entirely different. All right. Well, I think that I am not going over that any more. Now, you say this meeting that was called over there at Mr. Parker's house, you heard about it through whom?

A. I heard about it Friday night when I picked McCutcheon up at his home.

Q. Friday night. He told you that they were going to have a meeting over there?

A. He told me that they were going to, a group of men was going to be there to decide what to do without hostler helpers on the engine.

Q. You stated here in your affidavit that they were going to decide what to do to get those jobs back, didn't you?

A. Well, that among other things.

Q. Well, you testified to that before. When did you get this—has anybody suggested to you recently, in the last week or so, that you were going to meet over there to see about how you would run your engine without an outside hostler helper, instead of meeting there to get those jobs reestablished? Has anybody suggested it to you?

A. In the last day or two?

Q. In the last day or two or any time, has anybody suggested since you gave this deposition back there in November, 1955, just a month after this thing happened, what that meeting was held for?

A. I thought about it before they even had the meeting, what they were going to do about it, without a helper on the engine.

Q. Didn't you testify then that the purpose of that meeting was to plan to be of assistance in getting the hostler helpers jobs restored?

A. I possibly did, among other things.

Q. Didn't you say you were going to go over and give all your moral support, "Is all that I had"?

A. That's still all I have, yes.

Q. And didn't you say you were ready to do it with, do whatever you could, of course?

A. Certainly. I still am.

Q. But now you tell us though the meeting over there at Mr. Parker's house was to see about how you were going to run your engines with a laborer doing the hostler helpers work?

Mr. Taylor:

We object to that. That's not what he testified to at all.

The Court:

Overruled.

Mr. Simpson:

I have been noticing two or three witnesses here that now say that the meeting was not to try to get the hostler helpers jobs reestablished. The meeting, they say now, was to try to learn how to run an engine without an outside hostler helper.

Mr. Pettus:

We object to the argument.

The Court:

I overrule the objection. Proceed with the interrogation.

Mr. Simpson:

I have finished on that subject.

Q. Now then, Mr. Thomas, you told us that on Sunday night you spent the entire night down at the barbecue stand, Rex's Barbecue place, is that right?

A. I stayed at the Rex's, or in the vicinity of the Rex's.

Q. Now, what do you mean by "in the vicinity"?

A. Well, on the side of the street that Rex's is on, either there or no less than—no further away than 75 feet.

Q. What is that over on the other side?

A. On either side.

Q. You mean you may have gone as much as 75 feet towards the L&N property?

A. I said on the side of the Rex's.

Q. I am just trying to understand you now. The Pinson Pike runs along parallel with the L&N Yards there, doesn't it?

A. That's right, right across the street, the Rex's is.

Q. Rex's is on the right hand side going towards Tarrant, and the Yards on the left?

A. That is the side I stayed on, on the Rex's side.

Q. And there is an entrance there, right off the Pike, isn't there?

A. That's right.

Q. How far would you say that little bridge is from the edge of the Pike?

A. About 25 feet, maybe.

Q. About 25 feet?

A. Yes.

Q. And the other little entrance there, the other one where you drive across it, up there a few feet above, it runs about how far from the Pike does it begin?

A. Maybe 50 or 75 feet.

Q. About 50 or 75 feet?

A. I don't know.

Q. Now you say you didn't get more than 75 feet from what, that night?

A. From the Rex's side of the—I never went 75 feet at the most in either direction of the Rex's side of the street.

Q. In either direction what?

A. I never crossed the street, I had no occasion to. There was nothing over there, it was shutdown.

Q. You mean you spent the night over there around Rex's Barbecue, and you never did go over there around the head of that bridge, 25 feet away from the Pike?

A. I might have walked up that way.

Q. Well, don't you know you were standing over there flexing your muscles over there, and somebody walked up, came over there and said "Reese, what are you doing on this bridge?"

A. I never got on the bridge.

Q. There at the end of the bridge. And don't you know you told him you were there to see that nobody went across that bridge?

A. I did not.

Q. You did not. That did not happen?

A. I did not.

Q. Now, when you left Rex's Barbecue the next morning, that is Monday morning, you say it was about 9:00 o'clock you think?

A. That's right.

Q. And you came down to the foot of the steps there at Mr. Kirchner's office?

A. That's right.

Q. You hadn't been in bed that night, and you had been up part of the night before?

A. I didn't say I hadn't been to bed. I went to sleep in my car parked by the side of the Rex's.

Q. Oh, part of that night you slept out there in your car?

A. Yes.

Q. Was there some reason that you couldn't leave there, some reason you couldn't go home and go to bed? You had a car, and it wouldn't have taken you but four or five minutes to drive home, would it?

A. Yes, it would.

Q. How long would it take you to have driven home from Rex's?

A. About 20 minutes.

Q. Where do you live?

A. East Lake.

Q. In East Lake?

A. Yes.

Q. You could have driven across there in 20 minutes, couldn't you, and gone to bed?

A. My job was at stake, and I didn't know what was going on, and I wanted to be there when I found out what was going on.

Q. Had anything been said about abolishing the hostlers jobs? You were a fireman and hostler, weren't you?

A. The roundhouse was shutdown, and everything else. I didn't shut it down.

Q. You didn't? But you slept out there in your car instead of going home to sleep?

A. Yes.

Q. Now, can you tell us why you slept out there in your car instead of going home to sleep?

Mr. Taylor:

We object to that.

The Court:

Sustained.

Mr. Simpson:
This is cross examination, if Your Honor please.

The Court:
"Why" calls for his motive.

Mr. Simpson:
Judge Black showed me on appeal to the Supreme Court one time that you can cross examine a witness by asking why he did a certain thing. I withdraw the question, however.

The Witness:
I would be glad to answer that question.

Q. Well, if there is no objection over there, I'll let you answer it.

Mr. Taylor:
Go ahead and answer it.

Q. Just tell us why you slept over there.

The Court:
I overrule the objection.

Q. Instead of going home?
A. I was sick and dead tired, and I felt like that I would pass out from lack of sleep and rest if I tried to drive home across two mountains.
Q. Two mountains?
A. Yes.
Q. Mr. Thomas—
A. Two mountains, numerous curves, and crazy people driving on it.

Q. Along, away along in the night?

A. Yes.

Q. What time of night did you go to sleep?

A. It was about 2:00 o'clock in the morning.

Q. About 2:00 o'clock in the morning. There would be a lot of crazy people driving you think on Sunday night?

A. Yes, sir, on that road.

Q. On that road?

A. Yes.

Q. So rather than risk driving home at 2:00 o'clock in the morning to get some sleep, you stayed out there within a few feet of that bridge that led into the L&N Yards, didn't you?

A. I was too tired and sleepy to even attempt to drive home.

Q. When you woke up next morning you were still so tired and sleepy that you came on downtown, is that right?

A. I had got two or three hours. Two or three hours when you need it is worth sometimes ten when you don't need it.

Q. All right. You came down here, and when you got down to Mr. Kirchner's office you saw Mr. Camp, who is a Special Agent for the L&N Railroad, isn't he?

A. That's right, he is Chief of Police.

Q. Chief of Police. He was standing down there on the sidewalk, was he?

A. That's right.

Q. Near the entrance to Mr. Kirchner's stairway?

A. That's right.

Q. You say Mr. Camp told you that there wasn't anybody up there in the office that morning except Mr. Kirchner and Mr. Parsons?

A. That's right.

Q. And that they were in conference with Louisville by telephone and didn't want to be disturbed?

A. That's right.

Q. And he asked you not to go up there, did he?

A. No, he did not.

Q. He didn't ask you not to go up there?

A. No.

Q. So he told you—you said you had heard Mr. Otts was down there, did you?

A. I said that a man told me that he had been called to Birmingham for a conference.

Q. You found out from Mr. Camp that Otts wasn't there, didn't you?

A. That's right.

Q. Did you go on away when you found that Mr. Otts wasn't there?

A. I had no occasion to. I know him, I have been knowing him for years, I didn't mind standing there talking to him.

Q. No, but I say that when you found out,—for a man that had been away from home and out of bed all night long and part of the night before, when you found that Mr. Otts, the man you had come down there to see about, wasn't there, you then didn't go on and go away from there?

A. No.

Q. You stood around and continued—

A. He didn't order me away. He stood there and talked to me.

Q. You stood in the door there, you said you didn't intentionally block it, but you stood in the door. How long did you stay around there?

A. I didn't say I stood there all that time.

Q. How long did you stand around that entrance?

A. I hung on the parking meter and talked to him. And after Claude Johnston came up he hung on the same meter, and leaned up by the side of the car and talked with us.

Q. I didn't ask you about Mr. Johnston. I asked you how long you stayed there at the entrance to that office that morning.

A. Maybe an hour or an hour and 15 minutes.

Q. You stayed a definite time until you were relieved, didn't you?

A. Relieved from what?

Q. Who relieved you from watching that—

A. Relieved from what?

Q. When did Mr. Schilleci and Mr. Saab come up there?

A. I didn't know when they came up.

Q. Well, you left when they came, didn't you?

A. I don't know whether they came up or not.

Q. Mr. Thomas, who told you to come down there and picket that entrance to that building and keep anybody from going in and out of the main office of the Company?

A. Nobody told me anything.

Q. You just did it on your own?

A. I didn't do any picketing.

Q. Oh, you didn't do it on your own? Well now, you were standing down there in that entrance, or near that entrance, you say, leaning on a parking meter part of the time, when Mr. Ben Mitchell came up I believe you told us?

A. That's right.

Q. Mr. Mitchell was an official of the Railroad, wasn't he?

A. That's right, still is.

Q. He was Yardmaster, wasn't he?

A. I don't know. He is Trainmaster.

Q. He was Trainmaster at Boyles, wasn't he?

A. That's right.

Q. And Mr. Mitchell, did he walk up or come up in a car?

A. I don't remember how he came up—he walked up.

Q. He started to go on upstairs, didn't he, in the Company's office?

A. I don't know whether he did or not.

Q. He started to go up the steps, didn't he, he turned in to go up the steps?

A. I spoke to him. I know him.

Q. I didn't ask you if you spoke to him. I say he turned to go up the steps there, didn't he?

A. I don't know whether he did or not. I just told him what Camp said.

Q. Now then, Mr. Camp was standing right there you tell us?

A. Right there by the side of me.

Q. Right there?

A. Yes.

Q. Now, you didn't say anything about—you didn't wait until Mr. Camp could tell him, you didn't wait for Mr. Camp to tell Mr. Mitchell not to go upstairs, did you?

A. I don't know whether I said it first or Camp said it.

Q. Mr. Camp—

A. He verified the conversation.

Q. Wait a minute. Mr. Camp had told you not to go up, not to disturb those people?

A. That's right.

Q. Mr. Camp was standing near Mr. Mitchell, an official of the Railroad, when he walked up, and it was not Camp that told him not to go up?

A. I didn't tell him not to go up.

Q. It was Mr. Thomas that told him not to go up, wasn't it?

A. I didn't tell him—

Q. You told him there were only two men up there, and that they were in conference and didn't want to be disturbed?

A. I said Mr. Camp said they don't want to be disturbed.

Q. What difference did it make to you, Mr. Thomas, if you were not trying to interfere with the operation of the Company's business, whether one official of the Company went up to see another official or not? What business is that of yours? Why were you concerned about it?

A. I wasn't concerned about it.

Q. Why were you telling him then not to go up there and disturb those people?

A. Well, I thought I was doing him a favor.

Q. You were not going to let Mr. Camp do him that favor, you were going to do that favor, were you?

A. I don't know. It didn't strike me as important.

Q. Did it strike you as important—I will ask you whether or not you stood up there, as you said, a while ago, in that doorway part of the time, and shoved Mr. Mitchell back when he started to go up those stairs?

A. He's bigger than me.

Q. I don't know whether he is or not. What do you weigh?

A. I weigh about 225.

Q. 225?

A. Yes.

Q. And you are pretty strong, aren't you?

A. That's debatable too.

Q. Well, you are an able-bodied man, aren't you?

A. I'm 46 years old.

Q. You are 46 years old?

A. Yes.

Q. And you are an able-bodied man, aren't you?

A. I hope so. He is too.

Q. He is?

A. He's bigger than I am.

Q. And you had a reputation too of being a fighter, haven't you?

A. I never heard of it.

Q. You never have heard of that?

A. No.

Q. I will ask you whether or not at the time you went to sleep out there in your car on that Sunday night, slept around there, you say you slept, I will ask you whether or not you had been drinking pretty heavily, Mr. Thomas?

A. I had not.

Q. I will ask you whether or not—you told us here a while ago that along towards the latter part of the strike you were at home practically all the time. I will ask you whether or not the other pickets out there had to finally ask you to leave and go home because you were drinking so that you were disorderly and raising a lot of Cain out there?

A. The girl that runs the cafe, Mrs. Hurst, I told her, or either McCutcheon told her, to come out there and wake me up at 4:00 o'clock, that I was dead tired and wanted to go home, which she did.

Q. Well, did you go home?

A. I did, straight home.

Q. At 4:00 o'clock?

A. That's Tuesday morning I'm talking about.

Q. My question was didn't you get to drinking so heavily out there that other pickets finally asked you to stay off the job?

A. Pickets?

Q. That the pickets, the people that were watching the end of that walk, I call them pickets, you say because they didn't have a sign they were not pickets, but the people that were watching there to keep anybody from going in, didn't they finally ask you to go home?

A. There has never anyone asked me to go home for anything.

Q. You did spend most of the last few days of that strike at home, didn't you?

A. And I was sick in bed, with a very bad cold.

Q. Was it a cold?

A. Absolutely. I keep it all the time practically on the third shift job.

Q. Whatever it was, you stayed most of the time in bed at home and away from the strike during the last two days, didn't you?

A. That's no indication I was at home drunk.

Q. I don't mean to argue with you. I am just asking you about the fact.

A. No, sir.

Q. Now, at the time Mr. Mitchell came down here and started to go up to Mr. Kirchner's office, the Superintendent's office, and you told him that Mr. Kirchner didn't want to be disturbed by another official of the Company, did he stay around there or did he leave?

A. He stayed around and talked five or ten minutes, and left.

Q. Five or ten minutes, then he left?

A. That's right.

Q. You say that after you either told him that, or as he said you shoved him back and stopped him, that he stayed there as much as five or ten minutes?

Mr. Taylor:

We object to that form of question.

A. You testified I shoved him, not me.

Q. You didn't say you shoved him back?

The Court:

Don't argue with the witness, propound your question.

Mr. Simpson:

All right. I don't mean to argue with him, Your Honor.

Q. You say whatever happened there, he stayed there and talked for five or ten minutes?

A. Yes, he stayed there and talked five or ten minutes.

Q. After he started, and didn't go up to Mr. Kirchner's office?

A. He might have changed his mind.

Q. You think you helped him change his mind?

A. I am not ir a habit of helping officials change their mind.

Q. Anyway, he did change his mind?

Mr. Taylor:
We object.

A. I don't know whether he changed it or not.

The Court:
I sustain the objection.

Q. Now then, when did you next see Mr. Mitchell after he left there?

A. Next time I saw him was at the Master Mechanic's gate around noon.

Q. What time of day?

A. Some time around noon.

Q. Around noon?

A. Some time around noon.

Q. Of the same day?

A. That's right.

Q. On Monday?

A. That's right.

Q. Now when you left Morris Avenue and the Superintendent's office on Monday, where did you go?

A. I went around to the Lane Drug Store on First Avenue and got something to eat.

Q. Where did you go then?

A. I went, I started towards Rex's Barbecue, and I ran into Barnett, he hollered at me out there in Inglenook.

Q. You picked up Mr. Bruce Barnett?

A. That's right.

Q. He is one of the Defendants here, isn't he?

A. That's right.

Q. The two of you went where?

A. He said "Let's go down to the Master Mechanic's gate and see if there is anything going on over there in the Yard", which we did.

Q. Now, let's get it in our minds here. As you go out from Birmingham, alongside of the Boyles Yard, the first gate you come to is the powerhouse gate, is that right?

A. That's right.

Q. The next is the roundhouse gate?

A. No, the next—

Q. Next is what?

A. You turn and go to the Master Mechanic's gate.

Q. Next is you turn into the Master Mechanic's gate?

A. That's right.

Q. Then the next is the roundhouse gate?

A. No, next is the Rex's crossing.

Q. Is that where the roundhouse is?

A. That's where we change clothes, at the Rex's crossing.

Q. The roundhouse is just a little further in there, isn't it?

A. I had no business over there.

Q. I'm just trying to get these gates lined up so that we will understand it. The first gate is what that you get to going out from Birmingham?

A. Powerhouse gate.

Q. What is the next gate?

A. The Master Mechanic's gate.

Q. And what is the next gate?

A. Rex's crossing.

Q. Then is there any other gate on beyond that?

A. Roundhouse entrance.

Q. Roundhouse entrance?

A. Yes.

Q. You left downtown and went back out to Rex's place, or that is—has that got any other name besides Rex's entrance?

A. It is getting monotonous, ain't it?
Q. I say has it got any other name?
A. No, sir.
Q. What part of the Yards does that go into?
A. The Rex's?
Q. Rex's entrance as you call it, yes.
A. It goes to the washroom and Engine Dispatcher's Office where we have to transact all of our business.
Q. All right. And beyond that is the roundhouse, is that right?
A. That's right.
Q. Some people call it the roundhouse gate, don't they?
A. That's right.
Q. You said Rex's gate?
A. That's right.
Q. You call it the Rex's gate. You have a right to call it what you want to.
A. I call it Rex's entrance.
Q. Rex's entrance?
A. Rex's entrance.
Q. You go in there and go to the washroom?
A. That's right.
Q. Then you go further to the roundhouse, don't you?
A. That's right.
Q. Now, you went out to that place?
A. Yes.
Q. In going from Birmingham to the Master Mechanic's gate you pass that entrance, don't you?
A. Which entrance?
Q. The one where you said you went, the one you call Rex's gate?
A. From Birmingham to the Master Mechanic's gate I would pass the powerhouse.

Q. The powerhouse gate?

A. Yes.

Q. All right.

A. And the next entrance, you would turn to the left and go approximately a block and be at the Master Mechanic's gate.

Q. Now, you say the next place you saw Mr. Mitchell after you left him, or after you left down here at Mr. Kirchner's office was out there at what place?

A. At the Master Mechanic's gate.

Q. Did you see him before you got to the Master Mechanic's gate?

A. No, sir.

Q. How long did you get to the Master Mechanic's gate before he got there?

A. It might have been five minutes, two or three; five or less.

Q. Two or three minutes, or maybe five minutes?

A. That's right.

Q. And when your car was stopped there it was stopped right blocking the gate, wasn't it?

A. The gate was closed.

Q. It was closed, but it was right blocking that gate, wasn't it?

A. It was a street. I didn't see any harm in stopping it there where I could see everything.

Q. Well, I realize you didn't see any harm in it, but I am asking you the question, you stopped your car so that if the gate had been opened it would have blocked traffic in and out, wouldn't it?

A. Well, I guess it would.

Q. You guess it would. Well, you know it would, don't you?

A. I don't see any reason for blocking it when it was already locked.

Q. I am asking you that, please, sir.

A. I just happened to stop there.

Q. Just happened to stop right there so nobody could drive up, unlock the gate and go in?

A. There is hedges or flowering shrubs on one side of it, and there's a big high arch entrance for people to walk through on the other side.

Q. You say Mr. Hawkins was sitting over there in the car, wasn't he?

A. I said he was. There was a car drove up shortly after we parked across the street, and about 50 or 75 feet behind us.

Q. Was that the one that Mr. Mitchell was in or the one that Mr. Hawkins was in?

A. That was after Mr. Mitchell had already driven up.

Q. Mr. Hawkins came on up?

A. Yes, sir.

Q. Mr. Letchman was there, wasn't he?

A. I don't know whether he was or not. Somebody was in the car with him but I couldn't tell who it was from the side I was on.

Q. Didn't you see Mr. Letchman get out there and join in the conversation about whether Mr. Mitchell was going in the Yard or not?

A. I didn't hear it.

Q. You didn't see it?

A. I moved my car out of the way.

Q. You left your car there, standing at the gate, and in about two or three minutes or maybe five minutes Mr. Ben Mitchell and Mr. Woelde drove up, didn't they?

A. That's right.

Q. In a car. Now you had seen those men coming there, and you had speeded up and come down and

passed them in your car as they were driving down there that distance from the highway down to that gate, hadn't you?

A. I don't remember passing anybody.

Q. Will you tell this jury—

A. I certainly wouldn't have on that dirt road.

Q. Wait a minute. That dirt road is a road wide enough for two and a half or three automobiles to go down abreast, is that right?

A. It is worse than a country lane with ruts.

Q. You say that it hasn't been a cherted road?

A. It is a rutty road, very rutty.

Q. I didn't ask you about the road down there, I am asking you if you didn't pass Mr. Mitchell on that road?

A. I wouldn't run over 5 or 10 miles an hour on that road.

Q. Now, Mr. Thomas, I didn't ask you if you would run over 5 miles an hour. Are you trying to avoid something? Why don't you answer my questions?

A. I didn't pass anybody. I have already said that I didn't pass anybody.

Q. My question is did you see Mr. Mitchell and Mr. Woelde driving down that road when they turned off the Pike, and did you then come on down there in your car and pass them and go up and park your car in front of that gate?

A. I didn't pass anybody.

Q. You say you didn't pass them and park your car in front of the gate then?

A. I didn't pass anybody.

Q. All right. When Mr. Mitchell and Mr. Woelde drove up there with your car in front of the gate, whether you passed them or not, they got out and said that they had come out there to see about some livestock and perishables?

A. I was already out of the car.

Q. You were out of your car?

A. Bruce Barnett was already out of the car. We were looking over into the Yard to see if we could see anybody working over there.

Q. What did you want to see if anybody was working over there for?

A. Well, I was curious.

Q. Just curious?

A. Yes.

Q. Was Mr. Hawkins and the man that was with him curious too?

A. They didn't come over there where I was. They didn't get out until after Ben came up.

Q. They were about 75 feet away most of the time, weren't they?

A. They came up some time after Ben come up.

Q. You were just curious, and you were looking around there. And when Mr. Mitchell got up there and Mr. Woelde, did Mr. Mitchell say something to you?

A. He got out of the car and come around and said he wanted to go in and see about some meat or perishables or something like that. I didn't pay much attention to him. My car was in the way. I said "Well, if you find anything, let me know, any livestock, let me know, and I will move it, I'll see that it is fed and watered."

Q. You were very careful to say you would do all that. Now, my question was, Mr. Mitchell spoke to you, did he?

A. That's right.

Q. Do you say that Mr. Mitchell did or did not ask you if it would be all right for him to go on in there and see about this thing, and get the bills of lading

out of the Yard Office, and see if there was any perishables or livestock in the Yard?

A. He's not in the habit of asking me things like that.

Q. Now, Mr. Thomas, I didn't ask you that. I am asking you if on this occasion he asked you if it would be all right for them to go in, for him and Mr. Woelde to go in there and look for those bills of lading?

A. No, he didn't ask me anything about going in there. He said he was going in there to see about it.

Q. Isn't it a fact you first told him that he couldn't go in?

A. I didn't tell him he couldn't go in any time.

Q. And isn't it a fact that Mr. Letchman then got out of the other car sitting over there and came over and said "Well, if there is any livestock in there you ought to let him go in and see about it", isn't that true?

A. If Mr. Letchman even got out of the car, he done it while I was moving my car out of the way.

Q. Isn't it a fact that after Mr. Letchman came over there and argued with you a while that you agreed that he could go in, he and Mr. Woelde, provided they didn't stay over 30 minutes?

A. I didn't even know Letchman was in the car.

Q. All right.

A. He done what he done, if he done it, in my absence in moving my car away from the entrance.

Q. And isn't it a fact that after Mr. Letchman came over there, that you then did get in your car and move it out of the way, away from the entrance, and these men went on in?

A. I don't know when Letchman—

Q. That is true, isn't it?

A. I didn't know that Letchman came over there. If he came over there he came over there while I was moving my car.

Q. Would you say you put a limit or didn't put a limit on the time Mr. Woelde and Mr. Mitchell could stay there?

A. I did not.

Q. You told us a while ago they actually stayed in there about 20 or 30 minutes, didn't you?

A. Something like that. I didn't time them.

Q. And when they came out, you told us a while ago you stayed there four or five minutes, and then you left?

A. That's right.

Q. So you were there just ahead of them, you stayed there during the 30 minute period, and then you left just after they left, didn't you?

A. I told him to let me know if there was any livestock in there.

Q. I didn't ask you about all of this.

A. Well, I did.

Q. I didn't ask you about all of this, if you were going to move the livestock. I am asking you if it is not a fact that you told those two men they could stay in there 30 minutes, and if they didn't come out in 30 minutes you were coming in and get them, and if you didn't wait there on the two men, wait and notice to see if they came out, and you left there just after they left?

A. I did not.

Q. All right. Now, Mr. Otts, that is J. B. Otts, Jr one of the Defendants, asked you, did he, to see about getting the signs painted?

A. That's right.

Q. That was on Saturday morning about what time?

A. Around 3:00 a. m.
Q. What?
A. Around 3:00 a. m.
Q Around 3:00 a. m.?
A. Some time around that time in the morning.
Q. You were getting off from work?
A. No, he was going out to work.
Q. He was going out to work?
A. Yes.
Q. Were you going out or coming off?
A. I was on the job.
Q. You were on the job?
A. Yes, sir.
Q. About 3:00 a. m.?
A. Yes, sir.
Q. You got off about 7:00 a. m.?
A. That's right.
Q. He was going out on a run, out of town?
A. To Montgomery.
Q. Where were you when he asked you to get those signs painted?
A. In the washroom.
Q. And did he tell you what to put on them?
A. I asked him what he wanted to put on them, and he wrote it out on a little piece of paper and handed it to me.
Q. What was it that he wrote out on this paper?
A. "L&N Railroad Unfair to Outside Hostler Helpers", I believe it was.
Q. Did he sign it by any Union?
A. No.
Q. He didn't have any Union name on it?
A No.
Q. Usually when you have picket signs, you have the name of the Union that is picketing, don't you?

A. That could have been added if we had got authorization for it.

Q. So at that time you didn't think you were going to get authorization for the strike, did you?

A. We didn't know, we couldn't presume.

Q. Well, you didn't know whether you were going to get authorization or not, did you?

A. I wanted to be prepared in case we did.

Q. You were preparing for a strike, and if you had the authorization, why you could just put the Union name on there, couldn't you?

A. That's right.

Q. If you didn't get authorization, why you would just have pickets that were ready, or signs ready without the Union name on them, wouldn't you? You wanted to be ready in either case, didn't you?

A. What do you mean "In either case"?

Q. Well, you wanted to be ready to strike whether it was authorized or was not authorized?

A. We wanted to be prepared to have the signs if it was authorized. And it wasn't, and they wasn't used.

Q. And so when Jake Paschal told you all that this would be a wildcat strike, an outlaw strike, and the Union couldn't support you in it, you went ahead and struck anyhow, you didn't use those signs because Paschal had told you that it was an outlaw strike, didn't you?

Mr. Taylor:

I object to that question because he has four questions lumped into one. I don't object to him asking them singly.

The Court:
Overruled.

Q. Isn't that right, Mr. Thomas?
A. You ask four questions again, and I might remember all of them.

Mr. Simpson:
All right.

The Court:
Rephrase your question.

Q. Didn't Mr. Paschal send word down here that that would be an outlaw strike?
A. That's what I found out Sunday afternoon.
Q. Sunday afternoon?
A. Yes.
Q. And you found it out from whom, who told you that?
A. Mr. Otts.
Q. Mr. Otts told you that?
A. Yes.
Q. Mr. Kennedy told you that too, didn't he?
A. Mr. Kennedy didn't tell me anything.
Q. Mr. Kennedy made the statement over there at that meeting?
A. He made one something to that order that I heard, but he wasn't talking to me.
Q. He told that meeting over there that he had called Mr. Paschal that very afternoon, and Mr. Paschal told him not to let the men strike, it would be an outlaw strike, didn't he?
A. He further substantiated what Otts said.
Q. What you already knew?

A. No, I didn't know it until I got to the meeting.

Q. Well, I beg your pardon, sir, I didn't mean you knew it then. What you thought or what somebody told you?

A. I don't let other people's thoughts judge my action.

Q. You just do what you want to, don't you?

Mr. Pettus:
We object to that.

Q. Is that what you mean?

The Court:
Overruled.

Q. What do you mean, you don't let other people's thoughts judge your action?

A. I don't know what Mr. Kennedy thought.

Q. Did you think I asked you that, Mr. Thomas?

A. I was only doing what I thought was right; if we had a strike, to be prepared for it, and have the signs ready in case the General Chairman did authorize the strike.

Q. If you were getting them ready only for an official strike, you would have the Union's name on them, wouldn't you?

A. That could have been added later, which we done many times during the 58 day strike.

Q. If you were not going to have a strike unless it was going to be an official strike you would have gone ahead and put the Union's name on them, wouldn't you?

A. It wasn't always on them during the 58 day strike either.

Q. The 58 day strike was a legal strike, wasn't it?
A. Yes, sir.

Mr. Taylor:
We object to that, calling for a conclusion of this witness, incompetent, irrelevant, and immaterial.

The Court:
Sustained.

Mr. Simpson:
He's the one that brought it up.

Mr. Taylor:
No, you brought it in.

Mr. Simpson:
Did I? Well, all right.

Q. Mr. Thomas you got out there Sunday night, and you say you walked over into the Yard when you came back from this meeting, you walked over into the Yard, didn't you?
A. I walked over into the washroom.
Q. Into the washroom?
A. Yes.
Q. With Mr. McClendon?
A. No, Mr. McCutcheon.
Q. I mean Mr. McCutcheon.
A. Yes, sir.
Q. Did anybody else go with you?
A. No, sir.
Q. Did you see Irvin Rich that evening?
A. I did not.
Q. Do you know Mr. Rich's wife and baby?

A. No.

Q. Do you know his car when you see it?

A. No.

Q. Did you see it parked there beside the bridge, near the bridge that led into the washroom?

A. I wouldn't know it if I saw it parked here.

Q. Did you see Mr. Parker there?

A. I saw Mr. Parker over in the Rex's.

Q. You saw him over in the Rex's?

A. Yes.

Q. Did you see Mr. Parker talking to Mr. Rich's wife and baby?

A. I don't know Mr. Rich's wife or baby either.

Q. All right. Did you see him talking to a lady and a child in a car sitting there by the bridge?

A. He was there inside of Rex's Cafe when I saw him.

Q. Did you see him talking to a lady and child in a car?

A. I did not.

Q. Did you see Mr. Rich over there after you got in the roundhouse, got over in the Yard?

A. I didn't see anybody in the Yard but L. P. Jordan, and he was in the office.

Q. I will ask you whether or not you and Mr. Parker and Mr. McCutcheon walked away from the washhouse and went down through the roundhouse and went out into the Yard, and hollered through that Yard that night "Labor trouble; clean out the Yard", or "Get out of the Yard"?

A. I did not.

Q. And if you went near or passed Mr. Irvin Rich as he was standing there, and went on to the roundhouse and did that?

A. If I had passed him I would have seen him. I did not see him.

Q. Maybe you didn't see him, but did you go near or did you see some man as you three went into that roundhouse that night?

A. I didn't see anybody.

Q. Whether you saw them or not, do you remember who it was that went in the roundhouse with you?

A. Nobody went into the roundhouse with me because I didn't go in.

Q. Do you tell this jury that you are not one of the men that was going through that Yard that night calling out, hollering "Labor trouble; get out of the Yard", or "Get out of here"?

A. I'm not that big and that mean.

Q. I didn't ask you that, did I? I am asking you if it is not a fact that you and one gang, and Mr. Hall and some other people in another gang went through that Yard that night hollering "Labor trouble; get out of the Yard"?

A. I didn't do it, and I can't speak for anybody else.

Q. If you were not in the gang that hollered to R. E. Thomas and Mr. Simrell and those people up there "Get out of this Yard; if you don't get out we're coming back to get you"?

A. I didn't even go into the Yard. I only went to the washroom.

Q. You just deny that you went in the Yard. You did go across the little bridge, through the fence and into the washroom that night, didn't you?

A. I didn't go into the washroom, I went to the door of the entrance to the Train Dispatcher's Office.

Q. You claim that you spent that time standing there talking to Mr. Jordan?

A. About five minutes.

Q. All the time you stayed in there you claim you were standing there talking to Mr. Jordan?

A. That's right.

Q. And you didn't even see Mr. Rich?

A. I did not.

Q. And you didn't go through the roundhouse and out into the Yard and run the people out of the Yard?

A. I did not.

Q. Over there in the meeting at Mr. Parker's, I will just ask you one more question about that. You know Mr. Fleming, don't you, that testified here, the first witness in this case, a rather small man?

A. I thought I knew him.

Q. What do you mean? Do you know him or not?

A. I know him, yes.

Q. You know him?

A. Yes.

Q. How long have you known him?

A. Not very well.

Q. Well, how long?

A. I just know he has been working out there off and on, cut off mostly. I know him, yes, I know him.

Q. How long have you been working with him and knowing him, over how long a period of years?

A. I have been working there 14 years.

Q. 14 years?

A. Yes.

Q. Has he been there all that time or most of it?

A. He has been cut off most of those 14 years.

Q. He has been cut off?

A. Yes, sir.

Q. What sort of job has he got?

A. I don't know what he has got now.

Q. What sort of job does he do? What is he, a fireman or brakeman?

A. He is a laborer, I understand, from what he said up here the other day.

Q. He has a laborer's classification, is that right?

A. I don't know what kind of classification he has got.

Q. Now, did you see Mr. Fleming over at Mr. Parker's that day?

A. Yes, I carried him over there.

Q. You carried him over there in your car?

A. Yes.

Q. You knew him pretty well, didn't you?

A. I knew him well enough to pick him up and give him a ride, yes.

Q. I will ask you whether or not in Mr. Fleming's presence there at Mr. Parker's in that meeting you are not the man that got up while J. B. Otts was on his feet and said "Its time to pull the pin. Let's close this thing up"?

A. I don't believe I have even heard that terminology used before.

Q. You have not? You have never heard the expression "Pull the pin"?

A. That is a brakeman's terminology.

Q. What is that?

A. That is a brakeman's terminology and switchman's terminology. I never heard a fireman or engineer or hostler use that terminology.

Q. That is Railroad terminology that is used around the Yard, to "Pull the pin", isn't it?

A. I didn't say it, no.

Q. You had heard it many times though, hadn't you?

A. I heard him say it up here.

Q. You heard him say it there on the stand, that you got up and said that, didn't you?

A. Yes, I heard him.

Q. Now, did you say that in Mr. Fleming's presence over there?

A. I positively did not.

Q. "Its time to pull the pin and close this thing up"?

A. I did not.

Q. Well, anyway, as soon as you left that meeting you went over and checked out as sick, didn't you?

A. No, I called up from home.

Q. I didn't mean that, I meant you went to a telephone and called up and checked out as sick, didn't you?

A. Yes, I did.

Q. Well, I am not in position to argue with you on that, but you did check out as sick as soon as you left that Parker meeting, didn't you?

A. I was, I did.

Q. You did, as soon as you left the Parker meeting?

A. About 30 or 40 minutes after I left there.

Q. Well, you checked out before 9:00 o'clock?

A. I checked out when I found out McCutcheon wasn't going to work the job, and I didn't want to work it with a nigger.

Q. You checked out before 9:00 o'clock, didn't you?

A. Oh, yes.

Q. All right. Did you know who they were going to assign to do McCutcheon's job over there?

A. I knew when they abolished the job that there would be a nigger on it, and I knew if he laid off there would be a nigger on it.

Q. You knew Mr. Fleming has a laborer's classification, hasn't he?

A. I don't know what he has got.

Q. You heard him say he had, I believe?

A. I know it now.

Q. How did you know that Mr. Fleming wasn't going to be assigned to be your helper?

A. I didn't know that he wasn't.

Q. What are you trying to bring in this "nigger" business in this lawsuit about? Did anybody tell you that they were going to assign a Negro out there to do your job there?

A. I would rather work with a nigger than to work with him, he's so slow and lazy.

Q. You would just rather work with a Negro than work with Fleming. All right.

The Court:

Let's confine the evidence to the answers to the question. Go ahead.

Mr. Simpson:

Thank you, Judge.

Q. Your answer is that nobody had told you that if McCutcheon didn't work that they were going to assign a Negro to be your helper, did they? That was your answer? Nobody told you that?

A. They usually do put a nigger on it.

Q. I thought you said they had never done anything like this before.

A. When the hostler helper laid off, nine times out of ten we would always get a nigger on the job.

Q. You had an extra hostler helper, Mr. Dougherty, didn't you?

A. He worked out in the Car Department.

Q. I can't argue with you. The question I am asking you, and I want you to answer it, so we will

nave to quit it, but nobody had told you that the laborer that would be assigned to your hostler helper would be a Negro, had they?

A. Nobody had told me it wouldn't, either.

Mr. Simpson:

All right, that's all. Come down.

Mr. Taylor:

Just one or two other questions, Mr. Thomas.

The Court:

Go ahead and ask your question. I want to finish before recess, if you can get through with him.

Mr. Taylor:

It is going to be very short. I just wanted to ask him this.

Re-Direct Examination.

By Mr. Taylor:

Q. You are a member of the Firemen's Organization, is that correct?

A. That's right.

Q. On October 23, 1955 you were a member of that organization, were you not?

A. That's right.

Q. What was your average rate of pay at that time?

Mr. Simpson:

I am going to object to that. What is the materiality of that?

Mr. Taylor:
October 23, 1955.

The Court:
I sustain the objection.

Mr. Pettus:
That is relevant on the issue of damages. He wasn't paid during this time, and none of the other 2,500 employees were paid.

The Court:
There is no counterclaim.

Mr. Pettus:
We don't have any counterclaim, but that goes to the losses that they claim.

The Court:
Well, they are not claiming, as I understand, for money that they didn't pay laborers.

Mr. Pettus:
Well, that is a savings that we are entitled I assume to argue.

The Court:
I sustain the objection

Mr. Pettus:
We except

Mr Taylor:
All right, I have one other question. May I ask him one other, Judge?

The Court:
Yes, one.

Q. Do you know whether Mr. Mitchell, Mr. Woelde, Mr. Kirchner, and Mr. Parsons, and Mr. Quiggins and Mr. Mills have been transferred from Birmingham since this work stoppage was concluded?

Mr Simpson:
We object to that.

The Court:
I sustain the objection.

Mr. Taylor:
All right, come down.

The Court:
Come down.

(Witness excused.)

The Court:
Gentlemen, we are going to take a recess for 20 minutes at this time.

(A short recess was had.)

The Court:
Call your next witness.

Mr. Pettus:
J. O. Bentley.

J. O. BENTLEY, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?
A. J. O. Bentley.
Q. J. O Bentley?
A. Yes, sir.
Q. Where do you live?
A. 1317 Prosch Avenue.
Q. What work do you do?
A. Switchman for the L&N Railroad.
Q. Switchman?
A. Yes, sir.
Q. What labor organization are you a member of?
A. Brotherhood of Railroad Trainmen.
Q. What is your average pay per day?

Mr. Gibson:

We object to that, incompetent, irrelevant, and immaterial.

The Court:

I sustain the objection.

Mr. Pettus:

We except.

Q. Do you remember this work stoppage?
A. Yes, sir.
Q. Were you paid during the work stoppage in October, '55 for the days that the work stoppage was in force?

A. No, sir.

Q. Do you recall that that work stoppage began on Sunday, October 23?

A. Yes, sir.

Q. Do you recall the occasion?

A. Yes, sir.

Q. Where were you on that day?

A. I was in Cullman.

Q. Did you come back to Birmingham that day?

A. Late in the afternoon.

Q. Late in the afternoon?

A. Yes, sir.

Q. Did you transact any Railroad business that day?

A. No, sir, other than I got rolled, I got misplaced some time Sunday night, between 8:00 and 9:00 o'clock.

Q. Then did you have any conversation with a caller or dispatcher then?

A. The chief caller called me.

Q. The chief caller called you?

A. And notified me that I had been misplaced.

Q. Did he assign you a new job?

A. Yes, sir, I placed myself on another job.

Q. On another job?

A. Yes, sir.

Q. Who was the chief caller that called you?

A. Junior Wren I believe.

Q. Now is there a different caller that calls switchmen from the caller that calls the firemen and engineers?

A. Yes, sir.

Q. That is, a different caller?

A. Different caller.

Q. Did you go on or about the Company property or in the vicinity of the Rex's Barbecue on Sunday?

A. No, sir.

Q. Did you get any notice or advice that there was a work stoppage on Sunday, did you learn about it on Sunday?

A. No, sir.

Q. You did not?

A. No, sir.

Q. When was the first time you learned that there was a work stoppage?

A. When I reported for work Monday morning.

Q. You reported Monday morning?

A. Yes, sir.

Q. Where did you report?

A. At the Master Mechanic's gate.

Q. At the Master Mechanic's gate?

A. Yes, sir.

Q. Do you know W. F. "Red" Pennington, one of the Defendants?

A. Yes, sir.

Q. Did you see him that morning?

A. I don't recall if I did.

Q. Monday morning, that is?

A. I don't recall it if I did.

Q. You don't recall about seeing him?

A. No, sir.

Q. Did you make a trip with Red Pennington?

A. Yes, sir.

Q. Where did you go to?

A. We went to Decatur.

Q. Do you know a man by the name of Jack Coley?

A. Yes, sir.

Q. Did you see him on that trip?

A. No, sir.

Q. Did you go to his house or where he was supposed to have a house?

A. Yes, sir.

Q. Was he there, Coley?

A. No, sir, he had moved from the present address that he was at, or the last time I knew where he lived, he had moved.

Q. Who was with you and Red on that occasion, if you recall?

A. Bruce Barnett.

Q. Bruce Barnett?

A. Yes, sir.

Q. Whose car were you in?

A. In Red's.

Q. After you failed to find Coley did you go anywhere near the Railroad property there?

A. Yes, sir.

Q. Where did you go?

A. To the Yard Office.

Q. About what time of the day was it?

A. Well, I would say it was around 4:00 or maybe 4:30.

Q. Did all three of you get out of the car?

A. Yes, sir.

Q. Did you go into the Yard Office?

A. Yes, sir.

Q. Do you know the people there, do you know who you saw there?

A. Yes, sir.

Q. Could you call some of them off?

A. Well, I saw the Yardmaster, Mr. Hardwick, and two or three clerks, and Mehaffey. I say two or three, I remember him, and Glasscock was a clerk, and Harry Dublin, a switchman. Mr. Toone, Special Agent.

Q. Mr. Toone, Special Agent, was there, was he?

A. Yes, sir.

Q. Was there a conversation there that took place in the office?

A. Yes, sir.

Q. In the Yard Office?

A. Well, a general conversation.

Q. Do you recall what it was?

A. Well, it was about the work stoppage.

Q. Just say what was said then.

Q. As well as you can remember?

A. I don't recall at all.

A. Well, I don't recall all that was said. There was some one wanted to know how things was going down at Boyles, and some one, it might have been myself, made the remarks that everything was at a standstill, wasn't any work going on.

Q. Did any of you have a newspaper?

A. There was a newspaper in the car.

Q. Do you know whether a newspaper was taken out of the car or not?

A. Yes, sir, I believe it was.

Q. Was there anything else said at the Yard Office by anybody about the work stoppage?

A. Well, most everybody was talking about it.

Q. How long did you all stay there?

A. I don't remember, about 15 or 20 minutes.

Q. 15 or 20 minutes?

A. Probably 30.

Q. Did you have any conversation there with Mr. Toone that you recall particularly?

A. Well, I spoke to him and shook hands with him, asked him how he was getting along.

Q. He is a Special Agent, is he?

A. Yes, sir.

Q. Did you all leave the Yard Office then?
A. Yes, sir.
Q. Where did you go then?
A. We went on up in what they call Old Decatur, up to the Freight House.
Q. Up to the Freight House?
A. Yes.
Q. What did you do there?
A. Well, we just got out and walked around and went inside of the Freight House.
Q. Who did you see there?
A. Well, I didn't know any of the men up there. I don't know who all was there.
Q. You didn't know any of the people there?
A. No, sir.
Q. That were in the Freight House, is that right?
A. Well no, I didn't know any of them that was in the Freight House.
Q. At the time you were at the Freight House, did Mr. Toone show up then?
A. Yes, sir.
Q. Was he there?
A. Yes, sir.
Q. He was there?
A. He was there.
Q. Was he there when you arrived at the Freight House, or did he come up later?
A. I don't remember for sure whether he was there when we got there or not.
Q. Now, did you go into the Freight House?
A. Yes, sir.
Q. And was there any talk or discussion in the Freight House?
A. Well, some, about the work stoppage.
Q. I see.

A. Some of the men didn't know about it.

Q. Did you tell them about it?

A. Well, we discussed it.

Q. How long did you stay at the Freight House?

A. Oh, I would say 10 or 15 minutes.

Q. When you left the Yard Office were the employees still there? Where were the employees that had ben on duty there when you left, back at the Yard Office? Were the employees still in the office? Were they on the outside of the office or where were they when you left, the ones that had been on duty there?

A. Well, some of them were leaving, I believe—let's see, to tell you the truth, I don't remember.

Q. You don't remember where they were?

A. No.

Q. How about the Freight Office, how long did you stay there?

A. About 10 or 15 minutes.

Q. When you all left were the employees that had been on duty there still on duty or did they leave?

A. I believe some of them were leaving as we were leaving.

Q. Some of them were leaving as you were leaving?

A. Some were still there.

Q. Do you remember any of the conversation that occurred in the Freight Office?

A. I beg your pardon?

Q. Do you remember anything particularly that was said by anybody?

A. I beg your pardon?

Q. Do you remember any particular conversation in the Freight Office, anything that was said by anybody, either to them or by them?

A. No, sir, I don't.

Q. You just remember there was a general discussion about the work stoppage, is that right?

A. Yes, sir.

Q. After you all had left the Freight Office, where did you go?

A. We came back around by where we thought Jack Coley lived, where he had moved from. We thought maybe we might see some of the neighbors around to ask about him, or maybe he might be back over there for something. We thought maybe we might get to see Jack Coley.

Q. Did you all see him on the whole trip?

A. No, sir.

Q. After you had failed to find him, did you return to Birmingham?

A. Yes, sir.

Q. About what time did you get back here, if you know?

A. I don't remember the time, but it was dark.

Q. It was dark?

A. Yes, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Gibson:

Q. Mr. Bentley, when did you get with Red Pennington that Monday?

A. When?

Q. Yes, sir.

A. Well, I don't remember the time. It was somewheres around noon.

Q. Is that your best judgment?

A. As well as I remember.

Q. Where did you get with him?

A. I beg your pardon?

Q. Where did you get with him.

A. Down at the main gate.

Q. What were you doing at the main gate at noon?

A. I just went down by the main gate.

Q. Were you curious?

A. Well, I just wanted to see if the work stoppage was over.

Q. All right now what did you do when you got down to the main gate to find out whether the work stoppage was over?

A. I didn't do anything.

Q. Well, that's the reason you went down there, wasn't it, to find it out?

A. Yes.

Q. Did you ask anybody about it?

A. I didn't have to ask, I could tell that by the crowd being on the outside of the fence, and out on the street.

Q. Now how many people would you say were there at noon on Monday?

A. Oh, I would say around 75 or 100.

Q. Doing some whittling too, weren't they?

A. I don't remember.

Q. Don't you know, Mr. Bentley, that there were some people sitting around at that gate, sitting around in the crowd, with open knives, doing some whittling?

A. No, sir, I do not.

Q. Do you remember when you gave a deposition in this case in November, about five weeks after this work stoppage happened? You do, don't you?

A. Sir?

Q. Don't you remember that?

A. I remember what?

Q. Do you remember coming down here?

A. Yes, sir.

Q. And giving some testimony about five weeks after this thing occurred?

A. Yes, sir.

Q. I will ask you whether or not at the time you gave that testimony this question was asked you, and whether or not you gave this answer?

Mr. Pettus:

What page is that?

Mr. Gibson:

That is page 15, right at the top of the page.

"Q. What were the hundred people doing that you saw at the gate?

"A. They were sitting around talking, some whittling." Did you give that answer?

A. I don't remember whether I did or not.

Q. All right, sir. How long did you stay down at the main gate with this crowd of a hundred people?

A. Oh, I would say to the best of my memory, that I can remember, around 30 or 40 minutes.

Q. And where did you go then?

A. I believe I went up to Red Pennington's, as well as I remember.

Q. Was that where you got with Bruce Barnett?

A. Yes.

Q. How long have you known Bruce Barnett?

A. I have been knowing Bruce by face about 4 years; by name about a little over a year now.

Q. Did you know him as working up around Decatur at one time?

A. Well, I have known him since I have been working here in Boyles.

Q. You didn't know him when he was up there?

A. I don't remember when he was up there.

Q. You used to work up there in Decatur, didn't you?

A. Yes, sir.

Q. When did you come to Birmingham?

A. November 3, of '51.

Q. Whose idea was it to make this run up to Decatur on Monday afternoon?

A. Red's.

Q. Did he tell you what he was going for?

A. Yes, sir.

Q. What did he tell you he was going for?

A. To try to locate Jack Coley, and plan a fishing trip.

Q. Say that again, please.

A. We went to see Jack Coley, to plan a fishing trip.

Q. To plan a fishing trip?

A. Yes, sir.

Q. When did you figure to go on this fishing trip?

A. Well, we didn't have any exact date, as well as I remember.

Q. Mr. Bentley, I understood you to say you went up there to see him to plan a fishing trip?

A. Ye, sir.

Q. When were you planning on fishing?

A. Well, I don't remember, just try to get a date to, for it, for a fishing trip.

Q. Was Bruce Barnett going fishing?

A. Yes, sir.

Q. Did he tell you that is what he wanted to do too?

A. Well, we were all talking of going fishing.

Q. You didn't have any special time in mind, to go fishing?

A. Well, at the time, I don't remember.

Q. You wouldn't ride 90 miles one way and 90 another to make plans for a fishing trip that you didn't have any idea when you were going to make it, would you?

Mr. Byrd:
We object to that, argumentative.

The Court:
Sustained.

Mr. Gibson:
All right.

Q. Did Red Pennington tell you that he had telephoned to Decatur and tried to locate Jack Coley before you left?

A. No, sir.

Q. He didn't mention that to you?

A. No, sir.

Q. He didn't tell you that he had called the Yard Office and that they told him they didn't know how to locate Jack?

A. No, sir.

Q. All right. About how long did it take you to drive up to Decatur?

A. Well, I don't remember.

Q. Give us your best judgment about it? What time of day would you say you got there?

A. Around 4:00 or 4:30.

Q. And you tell us that your sole mission for going up there was to find Jack Coley?

A. Yes, sir.

Q. And make some plans for some fishing trip?

A. Yes, sir.

Q. Right?

A. Yes, sir.

Q. After you went to this place where you say Jack Coley used to live you found that he was not home, and the house was vacant, you then went to the Yard Office?

A. Yes, sir.

Q. And you had only one reason for going to the Yard Office, and that was to find Jack Coley?

A. Yes, sir.

Q. Now, Mr. Bentley, it is a fact, isn't it, that a railroad man who moves his place of residence, vacates one house and moves to a new address, is required to furnish some one at some office with that new address, isn't he?

A. He is supposed to.

Q. You switched at Decatur a while, didn't you?

A. Yes, sir.

Q. Are you familiar with the Railroad Company setup there up there?

A. I was at the time, yes, sir.

Q. All right, sir. Now then, to what person was it Coley's duty to report his new address, if he moved?

A. Repeat that, please, sir.

Q. If Coley moved, he had to report his new address, didn't he?

A. He should have, yes, sir.

Q. All right. Now, who would he make that report to if he moved?

A. To the call boy, chief caller.
Q. And is a record kept of that?
A. Yes, sir.
Q. Who keeps that record?
A. Sir?
Q. Who keeps those records.
A. Well, the chief caller I reckon.
Q. When you got to the Yard Office and you asked somebody if Jack Coley was around, is that right?
A. Yes, sir.
Q. And you received a negative answer?
A. What is that?
Q. Somebody said "No"?
A. Yes, sir.
Q. Well, did you ask the call boy where he was living?
A. Well, I asked somebody, I don't remember who the call boy was at that time. I don't remember if I asked any certain one, I just asked, I remember asking if Jack Coley was there.
Q. Well, we've been over that. You asked if Jack Coley was there, and they said he was not. Then did you ask where he was living now?
A. I don't remember if I did or not.
Q. Well, you would remember if you went up there to find him if you asked people where he lived, wouldn't you?

Mr. Byrd:
We object to that as argumentative.

The Court:
Sustained.

Q. All you did, or the only purpose you had for going to the Yard Office, the three of you, you had

driven 90 miles to get up there, was to locate Jack Coley?

A. Yes, sir.

Q. And you tell this jury you didn't ask anybody where he was living?

A. I asked one, if Jack Coley was there.

Q. That's not what I asked you, Mr. Bentley. I asked you whether the three of you who had driven 90 miles to see one man, and had gone to the Yard Office in Decatur for the same purpose, of finding where he was, when you found he was not there, I will ask you to tell this jury whether or not you asked anybody where he lived?

A. Well, I don't remember if I did or not.

Q. Did you hear Red Pennington ask anybody that?

A. I don't remember.

Q. Did you hear Bruce Barnett ask anybody where Jack Coley had moved to?

A. I don't remember if he did or not.

Q. Did anyone of the three of you go and get a Decatur telephone directory and look in it to see whether there was an address listed for Jack Coley?

A. I didn't.

Q. Did you see either of the other two?

A. I don't remember if they did or not.

Q. Did anyone of the three of you do anything else at all to find out where Jack Coley was?

A. I don't remember at present whether we did or not, other than just ask.

Q. Ask whether he was working, or whether he was there?

A. Yes, sir.

Q. And they said he was not?

A. Yes, sir.

Q. There are three shifts, there were three shifts up there in the Yard, weren't there?

A. You man at present?

Q. No, at that time, they were working more than one shift?

A. Yes, they were working three shifts.

Q. And if you got up there at 4:00 o'clock, you got up there shortly after the beginning of the second shift?

A. Yes, sir.

Q. Who was it that you asked whether or not Jack Coley was on the first shift?

A. I don't remember.

Q. Now, did you ask anybody whether he was working on the third shift?

A. I don't remember if I did or not.

Q. The only thing that you remember, the only effort that you remember that you made, or anybody made, to find Jack Coley, after driving 90 miles for the sole purpose of locating him, was to ask whether he was there, is that right?

A. Ask that one again.

Q. I say the only effort any of you all made to locate Jack Coley up there in Decatur was to walk in the Yard Office and ask if he was there?

A. I don't remember.

Q. That's all you did to find him, wasn't it?

A. I don't remember.

Q. All right, sir. Well, now, let's see if you remember who was the first person to mention the work stoppage or strike in Birmingham?

A. The first person who mentioned it?

Q. Yes, inside of the Yard Office.

A. I don't remember for sure, but I believe it was a switchman, Harry Dublin, asked me what was going on down at Boyles.

Q. What did you tell him?

A. I told him that there wasn't anything, everything was at a standstill.

Q. Did he ask you anything about pickets?

A. I believe he asked if there was any pickets, or picket line.

Q. What did you tell him?

A. I told him that I hadn't seen any pickets or picket signs either.

Q. Mr. Bentley, what do you call a picket? Just tell these gentlemen here what you think a picket is.

A. He is supposed to be a man, or so I understand it, with a picket sign in his hand, walking back and forth in front of an entrance, or alongside of an entrance.

Q. There were certainly plenty of people at the main gate entrance when you left it, weren't there?

A. Ys, sir, there were several there.

Q. You said there was a hundred, didn't you?

A. I said, as well as I remember, around a hundred.

Q. Some of them whittling?

A. I don't remember now if they were or not.

Q. Now then, if the group of men, during a walkout or work stoppage or strike, or whatever we call it, if a group of men is clustered around a gate, an entrance to the employer's property, and a number of them are sitting there with open knives, and they are informing people that they are on strike, and asking them not to go in, you don't regard those as pickets?

Mr. Pettus:

We object to that as a hypothetical question. It doesn't hypothesize the facts in evidence, incompe-

tent, irrelevant and immaterial, the witness not properly qualified.

The Court:
I sustain the objection.

Mr. Gibson:
We except. We think the Witness Chapman stated he was put there for the purpose of asking people not to go in.

Q. Now, if you went to the Yard Office to find Jack Coley and failed, finding Jack Coley wasn't the reason you went to the Freight Office, was it?
A. Well, there was a possibility that we could have run up on him—
Q. You expected to find Coley?
A. —at the Freight House.
Q. At the Freight House?
A. Or uptown. We went through town in going to the Freight House.
Q. Did you stop anywhere in town?
A. Nothing only stopped at traffic lights.
Q. You didn't ask anybody if they had seen Jack Coley or knew where he lived?
A. I didn't see anyone that I thought might know Jack Coley.
Q. You went on up to the Freight House and walked in?
A. Yes, sir.
Q. Who was the first person up there you asked about Jack Coley?
A. Well, I don't remember.
Q. Did you ask anybody?
A. I don't remember if I did or not.

Q. Did Red Pennington ask anybody where he was?

A. I don't recall hearing it.

Q. Did Bruce Barnett ask anybody at the Freight House where Jack Coley was?

A. I don't recall hearing him.

Q. Well, you were there?

A. Yes, sir.

Q. All three of you were together all the time, weren't you?

A. Yes, sir, we all three were up there together.

Q. You got out of the car and went right in the Freight House, right together?

A. I don't remember if we all went in together or not.

Q. You were in there together, weren't you?

A. Yes, sir, we was in there together.

Q. And you were also together in the Yard Office previously, weren't you?

A. Yes, sir.

Q. And you stayed pretty close together all the time?

A. Well, not necessarily.

Q. That's not a very big office is it, Mr. Bentley?

A. No, it is a small office.

Q. About what dimensions would you say it had?

A. Well, I would say it was a little smaller than this room.

Q. Now the Freight Office is much smaller than that, isn't it?

A. I don't remember.

Q. Did you hear Red Pennington say anything in the Yard Office about whether or not anyone was working there, or whether they were working or shouldn't work?

A. Where?

Q. Tell us everything you heard Red Pennington say in the Yard Office at Decatur while you were there.

A. Well, I don't remember anything that Red said, only he may have asked about Jack Coley. I don't recall if he did or not.

Q. Well, you are the one that asked about Jack Coley, weren't you?

A. I did ask about Jack Coley.

Q. Yes, sir, because you knew most of those people there?

A. Yes, sir.

Q. Did you introduce Red to any of them?

A. I don't remember now.

Q. How long would you say that you stayed at The Freight House?

A. Oh, 10 or 15 minutes.

Q. What else did you talk about?

A. I don't remember now.

Q. So when you walked in that Freight House, they call that—I mean the Yard Office—they call that Oakworth, on the railroad, don't they?

A. Yes, sir.

Q. You found several people in there?

A. Yes, sir.

Q. And all of them were going about their business, as well as you could remember?

A. Well, they were just sitting around, wasn't anything to do, just all sitting in the Yard Office, switchmen, what switchmen were up there.

Q. Well, the clerks, that was their place of business, wasn't it?

A. Some of them.

Q. So far as you could tell, things were normal there when you got there?

A. Yes, sir.

Q. And the same thing is also true of the Freight House when you three got there?

A. Well, I'm not familiar with their work.

Q. You didn't see anything, there wasn't any sign of a disturbance around the Freight House?

A. No, sir.

Q. You didn't notice anything unusual going on?

A. No, sir.

Q. There were several people in there and they were sitting at desks, working, so far as you could tell?

A. Yes, sir.

Q. And when you left the Yard Office that situation was no longer true, was it?

A. The Yard Office?

Q. Yes, sir, the Yard Office. When you walked in they were working, and when you walked out they were leaving, that's true, isn't it, Mr. Bentley?

A. Well, I don't remember who left first. I didn't pay any attention when we left, we just left.

Q. They were quitting work, weren't they, when you left?

A. I don't know that they were or not.

Q. You don't know that?

A. No, sir.

Q. You were right with Red Pennington all the time, weren't you?

A. Well, I was with Red.

Q. You went in with him, and stayed with him and left with him?

A. Yes.

Q. That's right, isn't it?

A. Yes, I left with Red, yes, sir.

Q. And when you got to the Freight House, things looked normal, but when you left the Freight House the other employees were leaving too, weren't they?

A. Well, I don't remember if they were or not. Thy might have been, they might not have been. I didn't pay any attention.

Q. You don't recall too well about what happened on that trip, do you?

Mr. Byrd:

We object to that as an argument.

The Court:

Sustained.

Q. Some of the people at the Freight House left before others, didn't they?

A. I don't know, I couldn't tell you.

Q. Don't you recall that there were two men who remained in the Freight House after the rest had left?

A. No, sir.

Q. You don't remember that?

A. No, sir, I don't recall that.

Q. Did you have a newspaper when you left Birmingham?

A. Sir?

Q. Did you have a newspaper when you left Birmingham.

A. There was a newspaper in the car.

Q. Whose was it?

A. I don't know.

Q. Did it have any reference in it to a wildcat strike, or other strike at Boyles?

A. I think there was something in it about the strike, or whatever it was.

Q. You know there was, don't you?

A. As well as I remember there was.

Q. Did you take that newspaper in and show it around in the Yard Office at Oakworth?

A. No, sir, I didn't.

Q. Who did?

A. I don't know who did.

Q. Somebody did, didn't they?

A. Well, it was shown, but who did it, I don't know.

Q. By one of you three, was it?

A. By one of us, as well as I remember.

Q. You don't know which one?

A. I don't know who did it.

Q. Did the three of you take that newspaper and go over to the Freight House, and also walk around showing it to people? That's true, isn't it?

A. There was a newspaper over there, but I don't know how it got up there, I don't remember.

Q. You know the three of you took a paper to Decatur, don't you?

A. Yes, sir.

Q. And that is the paper you used in the Yard Office?

A. Yes, sir.

Q. To show the people?

A. Yes, sir.

Q. Now where did you get the paper you used in the Freight Office?

A. It was probably the same paper. I am not saying it was because I don't know how it got there, who carried it, I don't remember.

Q. You didn't have it at any time?

A. I don't believe I did, as well as I remember.
Q. Well, did Bruce Barnett have it?
A. I don't remember who had it.
Q. There were only three of you?
A. Yes, sir.
Q. You, Pennington and Barnett?
A. Yes, sir.
Q. And whoever it was, it was one of you three?
A. Yes, sir.
Q. And he first who had it walked around to first one desk and then another in the Freight House and showed it to the people there in the Freight House?
A. Well, it was shown. Everybody wanted to see it, they didn't have to carry it around to show it to every one. The way they did at the Yard Office, everybody just huddled around and looked at it.
Q. In other words, as soon as you appeared with a Birmingham paper everybody left their desks and clustered around for a look at it, is that what you tell this jury?
A. Yes, sir.
Q. Do you know Mr. Petty, the chief clerk at the Freight House?
A. No, sir.
Q. Do you know a man named Petty?
A. I have heard that name, heard of a man named Petty, I don't know him.
Q. An L&N employee?
A. Yes, sir.
Q. In Decatur?
A. Yes, sir.
Q. Do you know an old man named Smith?
A. No, sir.
Q. Did you hear Red Pennington say anything to either one of them in the Freight House or outside of the Freight House on that occasion?

Mr. Pettus:

We object to that. The witness says he doesn't know them, may it please the Court.

The Court:

I sustain the objection.

Q. Did you hear Red Pennington say anything to anybody, either inside or outside of the Freight House?

A. Well, we were all talking.

Q. What were you talking about?

A. Well, just different things, general conversation. Some were talking about what was in the paper, about the work stóppage.

Q. As a matter of fact, when you left the Freight House, the three of you, with that newspaper, Mr. Bentley, I mean when you left the Yard Office, you were on your way to the Freight House to show that paper around, weren't you?

A. No, sir.

Q. You didn't go there for that purpose?

A. As well as I recall, we didn't.

Q. Nobody at the Yard Office suggested you take that newspaper over to the Freight House and show it around?

A. I don't remember.

Q. Do you know Mr. Hardwick?

A. Mr. Hardwick?

Q. Yes.

A. Yes, sir.

Q. Is he an old gentleman who has been in bad health?

A. I don't know about his health.

Q. You heard he had had a heart attack prior to the time you went up there, didn't you?

A. No, sir.

Q. Did you hear Red Pennington talk to him in the Yard Office?

A. I don't recall if he did or not.

Q. Have you told this jury everything that you remember, Mr. Bentley, about that Decatur trip?

A. So far as I can recall, I have.

Mr. Gibson:

All right, you may come down.

Mr. Pettus:

Come down.

(Witness excused.)

The Court:

Call your next witness.

Mr. Pettus:

Mr. Bruce Barnett.

Mr. Byrd:

May this witness be excused, Your Honor?

The Court:

The witness may be excused unless there is objection.

BRUCE BARNETT, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Is your name Bruce Barnett?

A. That's right.

Q. Are you one of the Defendants in the case?

A. That's right.

Q. Where do you live, Mr. Barnett?

A. 4146 38th Avenue North.

Q. What is your job, are you employed by the L&N?

A. Yes.

Q. What is your job?

A. Locomotive fireman.

Q. Are you a member of a labor organization?

A. Yes, sir.

Q. What is that?

A. BofLF&E.

Q. What is that?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. Did you attend this meeting at Parker's house on Sunday, October 23?

A. I did.

Q. And you have heard the various names called out as being there?

A. Yes, sir.

Q. Have you got anyone to add or subtract from the ones that have been called out?

A. No, sir, I haven't.

Q. Do you recall about the time that the meeting started?

A. It must have been around 4:30.

Q. About 4:30?

A. Yes, sir.

Q. Did you say anything at the meeting?

A. No, sir, I did not.

Q. Can you recall what anyone else said, and if you can, name the person and state what he said?

A. I don't remember hearing anyone say anything about the meeting, because I didn't pay any attention to what was going on.

Q. You didn't pay any attention to it?

A. No, sir.

Q. Do you recall what the subject of the meeting was?

A. Well, some of them said that they was going to discuss the matter of getting the hostler helpers, keep them from pulling them off.

Q. Was that the subject that was discussed there?

A. Yes, sir.

Q. How long did the meeting last?

A. I don't know. I didn't stay there over 25 or 30 minutes, and I left. I didn't stay until all of them was gone. There was still some in the basement.

Q. There were still some there?

A. Yes, sir.

Q. Did you leave by yourself?

A. Yes, sir.

Q. Where were you Sunday night?

A. Sunday night?

Q. That is right after the meeting?

A. Well, I left there and went home and stayed until around 7:00 o'clock.

Q. Then where did you go?

A. I went down to the South Yard.

Q. Went down to the South Yard?

A. Yes, sir.

Q. What did you do there?

A. I went down there to ask a fellow about using a fishing camp he has got in Pensacola, Florida.

Q. Do you recall the man's name?

A. Ed Weldon.

Q. Ed Weldon?

A. Yes, sir.

Q. Did you make arrangements to use the camp?

A. I did.

Q. About what time was that?

A. It was around 7:00 o'clock.

Q. Then where did you go to?

A. I went back home.

Q. Did you stay at home that evening?

A. I stayed there until 9:00 o'clock or after.

Q. Where did you go at 9:00?

A. I went down to Rex's Barbecue.

Q. How long did you stay there?

A. Oh, maybe a couple of hours.

Q. Were you in the cafe all the time or were you wandering around outside some?

A. No, sir, I went in the cafe and drank a Coca-Cola, and run into Howard Anderson, and we went outside and sat in his car. I imagine it was seventy-five or maybe a hundred yards from the cafe.

Q. Did you all stay in and around the car then for a while?

A. Yes, about an hour and a half, maybe longer.

Q. Then what did you do?

A. I got out of his car and got in mine and went home.

Q. And the next morning, that is Monday morning, did you see Reese Thomas?

A. I saw Reese Thomas, it must have been around 9:00, 9:00 or 9:30.

Q. Where did you see him?

A. At the Passenger Station on Morris Avenue.

Q. How long did you stay there, how long did you stay at the Passenger Station, or did you leave?

A. I walked up to the corner there on Morris Avenue and 20th Street, stood around there a while, and went over to the cafe and stayed over there across the street, went back out there, stood around a little while again, it must have been around 10:30 or 11:00 o'clock, and Reese come by, and I rode out to Boyles with him.

Q. Drove out with him?

A. Yes, sir.

Q. Where did you all go?

A. We went down to the gate there at the Master Mechanic's office.

Q. Did anyone else come up there?

A. I don't remember. There was a car was there. I don't remember, whether I noticed whether it was there whenever we first drove up or not.

Q. Did Mr. Ben Mitchell come up at any time there?

A. They come up there after that.

Mr. Gibson:

We object to leading him. Counsel is asking yes or no questions throughout.

The Court:

I sustain the objection.

Mr. Pettus:

I am leading him to save time. These occasions have been repeated over and over again.

Mr. Gibson:

I want to hear the witness testify.

Q. Were you there when Mr. Mitchell drove up?

A. I was.

Q. Did you say anything to Mr. Mitchell?

A. I don't think I did.

Q. Did Reese Thomas say anything to Mitchell in your hearing?

A. Well, Mr. Mitchell said that they had some bills of livestock or something they wanted to go in there and see about, and Thomas told him to go ahead, and we would hang around there, and if there was any livestock, if they wanted it moved, we would go and move it for them.

Q. How long did you stay around there?

A. I stayed around there until Reese left. I left with him.

Q. Did you leave with him?

A. Yes.

Q. Do you know Red Pennington?

A. Yes, sir, I do.

Q. Did you see him that same day?

A. I did.

Q. What was the occasion for your seeing him?

A. I had started home, and he lives right close to where I do.

Q. Did you go with him?

A. I rode with him to Decatur.

Q. Did you all three go over to Decatur?

A. Yes, sir.

Q. What did you do in Decatur?

A. Well, we went up there to the Yard Office, first went by the house up there, he told me he was going to see a switchman, I don't remember what

his name was, I didn't know him, he wanted to see him, and we went by his house, and he come back and said there wasn't anybody there. So we went down to the Yard Office to find out where he lived.

Q. Was Bentley with you too?

A. Yes, sir.

Q. About what time did you get to the Yard Office?

A. Now, I don't remember. It must have been around I imagine around close to 4:00 o'clock.

Q. Now, did you go into the Yard Office?

A. I did.

Q. Do you know any of the employees that were on duty at that place?

A. I know Mehaffey and Glasscock.

Q. Mehaffey and Glasscock?

A. Yes, sir.

Q. Do you know Special Agent Toone?

A. No, sir, I don't.

Q. Was there any Special Agent that you knew there, that is was anyone pointed out to you as a Special Agent?

A. No, sir, there wasn't.

Q. Did you have any conversation with Mehaffey?

A. I don't remember whether I did or not.

Q. Did Pennington have any conversation with him?

A. I don't remember whether Pennington did or not. There was—

Q. You all three went into the Yard Office?

A. Yes.

Q. And how long did you stay in there?

A. We didn't stay in there long, maybe 10 or 15 minutes.

Q. Now, was there any talking back and forth between you, the three of you, and people that were in that office there?

A. No, sir, there wasn't.

Q. There wasn't anything said?

A. Not between us. There was between us three. Some of them asked what was going on at Boyles, and they told them there wasn't anybody working, and they wanted to know if we had any proof there wasn't nobody working. Some of them said there was a newspaper out there in Pennington's car. "That's all we know", and they wanted to see, to go out there and get it, and let them see it. Some of us went and got the paper and showed it to them.

Q. It was a Birmingham newspaper?

A. Yes, sir, Birmingham paper.

Q. That was brought into the Yard Office?

A. That's right.

Q. Did you all then leave the Yard Office at some point there?

A. They asked us would we carry that paper to the Freight House.

Q. To the Freight House?

A. And let them people up there see it.

Q. Did you all take the newspaper to the Freight House?

A. I don't know whether we had the paper whenever we left or not. I am pretty sure we did.

Q. Did you go to the Freight House?

A. We went to the Freight House.

Q. Did you know any of the employees on duty at the Freight House?

A. No, sir, I didn't.

Q. Did you go into the Freight House?

A. I went to the door.

Q. Went where?

A. To the door there, back platform.

Q. Was there any Special Agent that you saw at the Freight House?

A. No, that I know of.

Q. Not that you know of?

A. No, sir.

Q. Were there some people standing around there that you didn't know?

A. Yes.

Q. Did you go into the Freight House yourself?

A. I just went to the door.

Q. You just went to the door?

A. Yes, sir, to the shed.

Q. Did you carry on any discussion with anybody in the Freight House, any employees there, or either did Bentley or Pennington?

A. No, didn't.

Q. You didn't?

A. No, sir.

Q. Did you hear any conversation or discussion that was carried on by Bentley or Pennington with any of the employees who were in there?

A. There was some of them talking about what was in that paper.

Q. They were discussing that paper, were they?

A. Yes, sir.

Q. What was in the paper, the work stoppage in Birmingham?

A. Yes, sir.

Q. That was the subject of the discussion?

A. Something to that effect.

Q. How long did you all stay at the Freight House?

A. We didn't stay there but just a few minutes, for five or ten minutes.

Q. Then did you leave the Freight House?
A. We did.
Q. Where did you go then?
A. Come back home.
Q. You came back to Birmingham?
A. Yes, sir.
Q. Do you know about what time you arrived back?
A. No, sir, I don't.

Mr. Pettus:
That's all.

Cross Examination.

By Mr. Gibson:
Q. When did you go on that fishing trip?
A. What fishing trip?
Q. You three went up to Decatur to see a fellow to make some plans about going fishing, didn't you?
A. I didn't say I went up there to see about going on a fishing trip, did I?
Q. Didn't you hear Bentley say that just before you took the stand?
A. Well, I didn't say it.
Q. What was your mission in Decatur, Mr. Barnett?
A. Mr. Pennington asked me to ride up there with him. He didn't say why he was going.
Q. Did you ask him why?
A. He just asked me did I want to ride up there with him, and I told him I would.
Q. You know him pretty well, don't you?
A. I live right close to him.

Q. You didn't say "Red, what do you want to go to Decatur for"?

A. No, sir.

Q. Or anything like that?

A. No, sir, I didn't.

Q. Sir?

A. I didn't.

Q. At any time on the trip up there?

A. No, sir.

Q. He didn't tell you why he was driving 90 miles on Monday afternoon, did he?

A. If he did I don't remember it.

Q. And you tell the jury you have no idea why Red Pennington was driving from Birmingham to Decatur on Monday afternoon during the work stoppage?

A. No, sir, I don't. He just asked me did I want to ride up there with him.

Q. When was it you first found out what his mission was up there?

A. He stated he was going up there to see Coley, he didn't say why he was going, he didn't tell me why he was going.

Q. Did you know Coley?

A. No, sir, I didn't know him.

Q. He didn't tell you he was going up there to see Coley to plan a fishing trip with Coley at some later time?

A. Not that I remember.

Q. Did you ask him whether he had telephoned Coley before he started?

A. I did not.

Q. Did you have anything to drink with you that day?

A. I did not.

Q. Did you smell it on anybody else in the automobile with you?

A. No.

Q. Who was that that you stopped to pick up on the way up to Decatur?

A. Not anyone as I know of.

Q. Not anyone?

A. No, sir, not that I know of. I didn't see anyone except me and Red and Bentley.

Q. In your car?

A. That's right.

Q. Where was R. T. Brannum, Little Dick Brannum, when you first saw him?

A. He was at the Freight House.

Q. In Decatur?

A. That's right.

Q. Where was Armour Clark when you first saw him?

A. I don't remember seeing him.

Q. That is Ace Clark?

A. I don't remember seeing Clark.

Q. You know him, don't you?

A. I know a switchman out there they call Clark.

Q. You do?

A. They call him "Big Six" I believe is what they call him.

Q. You saw him in Decatur that day?

A. I did not.

Q. You did not?

A. No.

Q. Now then, when you drove up to the Freight House I believe all three of you got out of the car, is that right?

A. At the Freight House?

Q. I beg your pardon, the Yard Office.

A. Yes.
Q. You went in the Yard Office?
A. That's right.
Q. Did you see anybody in there that you knew?
A. Glasscock and Mehaffey.
Q. Is that all?
A. That's all.
Q. You didn't know Mr. Hardwick?
A. No, sir.
Q. Who was it that asked if Jack Coley was there?
A. I don't remember who it was, whether it is Pennington or Bentley that asked him about it.
Q. Well now, you went over there to find out where Jack Coley lived?
A. Yes.
Q. That's the reason you went over there. wasn't it?
A. Yes.
Q. All right, sir. Then who was it that asked in the Yard Office where Jack Coley was living?
A. I don't remember who it was because I didn't know Jack Coley.
Q. Somebody asked where Jack Coley was living, didn't they?
A. I imagine they did. I was standing there with them, I wasn't looking for Jack Coley because I didn't know him.
Q. You stayed pretty close to Red Pennington and Bentley all the time you were in there, didn't you?
A. I don't know, I don't remember whether I did or not.
Q. Did you fellows stand around there in one place all the time or circulate around a little?
A. I don't remember. That's just a small building there.

Q. Well, its about as big as this room, isn't it?

A. I wouldn't think so.

Q. How many desks are in there?

A. I don't know, I never have counted them.

Q. When you got there was everybody working?

A. I imagine they was.

Q. They did appear to be attending to their duties?

A. Yes.

Q. There wasn't anything unusual about the looks of the place?

A. Not that I noticed.

Q. You walked in, the three of you?

A. Yes, sir, that's right.

Q. Did you stay near the entrance, or did you go elsewhere in the Yard Office?

A. Well, there was kind of a—when you go in, it is kind of a little lobby-like. We was there in it. I imagine that is where the switchmen's all change clothes.

Q. You never got out of there?

A. How was that?

Q. You never went back where any desks were?

A. No.

Q. And Red Pennington didn't go where any desks were?

A. I never noticed whether he did or not.

Q. Bentley didn't go back where anybody was sitting at a desk?

A. I didn't know whether he did or not.

Q. Were you the man that went out and got the newspaper?

A. I don't know whether I did or not, I may have been.

Q. Sir?

A. I say I don't know whether I was or not.

Q. You don't know?

A. I don't remember.

Q. You remember somebody got it, don't you?

A. Some one of us three went and got it, but I don't remember which one it was.

Q. All of the people in the Yard Office all clustered around you three to look at the newspaper?

A. Yes, they did, they all took the paper and looked at it.

Q. The newspaper had a write-up in it of this trouble at Boyles, didn't it?

A. That's right.

Q. As a matter of fact, it had a big headline that said there was a wildcat strike at Boyles?

A. I don't remember what the headlines was.

Q. Something like that?

A. That's about like the News. I imagine it was.

Q. Now then, after you left the Yard Office you went to the Freight House?

A. That's right.

Q. Still looking for Coley?

A. No, sir, they asked us there at the Yard Office would we carry that paper to the Freight House and let them fellows see it.

Q. So you went to the Freight House with that newspaper as a favor to somebody in the Yard Office?

A. They asked us would we carry it up there.

Q. When you got there—you did carry it over there?

A. Yes, sir.

Q. When you got there, everything appeared normal?

A. That's right, Mehaffey and Glasscock was standing out on the platform there. I don't know, it must have been eight or ten men out there with them.

Q. What did you see them do, if anything?

A. They were standing there on the platform, wasn't doing anything.

Q. Was the door open?

A. Sir?

Q. The place was open for business?

A. There was a door there at the end of the platform open, the only one that I noticed open.

Q. That is the door that leads into the Freight Office, isn't it?

A. Well, that's the onliest door that I noticed.

Q. Speak up a little.

A. I say that's the onliest door that I noticed was open.

Q. That is the door that leads from the platform into the Freight Office?

A. That's right.

Q. Is that the door you went in?

A. I didn't go in; I went to it.

Q. Excuse me. I think you said only two of you went in, and that those two were Pennington and Bentley, weren't they?

A. I didn't say two went in.

Q. What did you say?

A. I said I went to the door.

Q. And stopped?

A. That's right.

Q. Well, did two go in?

A. I never noticed whether they went in or not.

Q. All right, did they stay out where you were?

A. I didn't pay any attention to them.

Q. Who had the newspaper?

A. I don't remember who had the newspaper. I never noticed. There was some there that I didn't even know. They may have had the paper.

Q. If somebody went in to show the employees in the Freight House. as a favor to somebody in the Yard Office, a newspaper, it wasn't you?

A. No, sir.

Q. But all three of you carried the paper over there, didn't you?

A. Some of them on the platform there was the one had the newspaper.

Q. I understood you to say that you three went over to the Freight House to take a newspaper.

A. We did, but some on the platform, standing on the platform maybe took the newspaper when we got there.

Q. I see.

A. I don't know who it was.

Q. You mean none of the three of you showed the newspaper around inside?

A. No, sir, not that I know of.

Q. Did all of you stay out on the platform?

A. I don't know whether Red and them did or not. I did.

Q. You did?

A. I never noticed where they was at.

Q. Who was it that took the newspaper in?

A. I don't know that.

Q. You know somebody did?

A. It may have been some of them employees up there so far as I know.

Q. When you left there some of them had already begun to leave, hadn't they?

A. I never noticed whether they had or not. When we left there was still a bunch on the platform, several.

Q. Now, let's talk about the meeting at Parker's just a little bit. Who was it that told you there was

going to be a meeting at Shorty Parker's that Sunday afternoon?

A. A colored fireman. Will Ross.

Q. A colored fireman named Will Ross?

A. Yes, sir.

Q. When did that take place?

A. When I was getting off from work, I was there at the washhouse, washroom, I was fixing to leave, and he told me about it.

Q. What time of day was it?

A. 3:00 o'clock.

Q. You were fixing to leave and go home?

A. I was fixing to go home.

Q. Instead of that you went to Shorty Parker's house?

A. I did not.

Q. Where did you go to?

A. I went home.

Q. After you got home, what did you do?

A. I took a bath and eat supper.

Q. You had been working since 7:00 then?

A. That's right.

Q. About that time?

A. Yes, sir.

Q. After you ate, then where did you go to?

A. I went to Rex's.

Q. Rex's Cafe?

A. That's right.

Q. Arriving there at what time?

A. It must have been around 4:15 or 4:20, something like that.

Q. Did you see anybody there that you later saw at the meeting, at Rex's?

A. I don't remember if I did.

Q. Mr. Barnett, did you go from Rex's to the meeting alone?

A. I did.

Q. In your car?

A. That's right, I left there by myself.

Q. Did Will Ross, this colored fireman, tell you what the meeting was about?

A. He just said they was going to have a meeting out there of some kind, and asked me was I going. I told him I didn't know anything about it.

Q. He said "They was going to have a meeting"; who was "they"?

A. Said a bunch was going to have a meeting up there.

Q. A bunch?

A. Yes.

Q. Did you understand him to mean a bunch of Railroad employees?

A. He didn't say. I didn't understand whether he meant Railroad employees or what.

Q. A bunch of steelworkers?

A. Well, it could have been a bunch of cotton pickers. for all I know.

Q. You went up there to see what, a bunch of what?

A. That's right.

Q. And when you went up there you didn't even know you were going to a meeting of Railroad people, did you?

A. I didn't know if they was all going to be Railroad men.

Q. Did you know some of them would?

A. I figured part of them would be, by being at Shorty Parker's.

Q. You figured part of them would be cotton pickers too, didn't you?

Mr. Byrd:
We object to that.

A. I didn't know what they might be.

The Court:
I sustain the objection.

Q. Now, when you got up there did you see a crowd of men around there?
A. Yes, there was several up there.
Q. And you have named all of them, or heard the names of all that were there?
A. I have heard their names.
Q. Of course in a short while you all went in there?
A. That's right.
Q. That is about what you would call a two-car garage, isn't it?
A. Yes, it looked to be about a two-car garage.
Q. Would it be about 20 feet by 20 feet in size?
A. Something like that.
Q. Paved floor or dirt or slag or what?
A. I don't remember what kind of floor it had in it.
Q. Did you all leave the doors open or close them?
A. They were left open.
Q. Was there anybody standing outside during the meeting?
A. I don't know whether there was or not, I never noticed.
Q. Now you told us I think that you don't remember anything that anybody said?
A. I didn't pay any attention to it.
Q. You went up there to a meeting, didn't you?
A. Yes. I went.

Q. And when you got there you found a meeting, and you entered into it?

A. Yes.

Q. When did you find out what the purpose of the meeting was?

A. Well, after I got up there and heard a few of them discussing what they were going to do, well I didn't pay any more attention to it. Myself and Howard Anderson walked over there in the corner and was standing there talking.

Q. Now that meeting consisted of several small groups of men in different parts of that garage talking to each other, didn't it?

A. That's right.

Q. There wasn't anybody who spoke to the group as a whole, was there?

A. Not that I know of.

Q. But somebody told you, you heard somebody say that it was a meeting about the outside hostler helper jobs?

A. There was some one that mentioned that.

Q. Now, who besides you and Howard Anderson was in the group that you were talking to?

A. I don't remember whether there was anybody or not.

Q. At any time?

A. Oh, I imagine there was at times, just walking around from one bunch to the other, some of them was, talking.

Q. Well, tell us somebody you heard say something in that meeting besides Howard Anderson.

A. I don't remember any of the rest of them saying anything to me about it.

Q. The best you recollect, you and Howard Anderson had a meeting there in the garage, and talked, and you don't remember anything anybody else said?

A. No, sir, I don't.

Q. About how long did you stay at the meeting, Mr. Barnett?

A. I don't imagine I stayed there over 30 minutes, if that long.

Q. Were you there when Kennedy and Logan and Vann left?

A. I don't remember whether I was or not.

Q. You remember they were there, don't you?

A. I don't recall seeing them. They could have been.

Q. So far as you recollect, you were the first man to leave the meeting?

A. That I know of.

Q. Sir?

A. So far as I recall. I didn't see anyone else leave.

Q. You remember giving your deposition here some five weeks or so after the work stoppage?

A. That's right.

Q. I will ask you whether or not at that time—

Mr. Pettus:

What page is this?

Mr. Gibson:

This is page 16.

Q. At that time these questions which I will read to you were asked you, and these answers which I will also read to you were given by you:

"Q. Now tell us everything you remember that happened at that meeting from the time you met,

playing with the dogs. and went inside of the garage, to the time you left?

"A. Well, I don't remember anything particularly after we all went inside, playing with the dogs."

Mr. Pettus:
That is page 16?

Mr. Gibson:
No, excuse me. Did I say 16?

Mr. Pettus:
Yes.

Mr. Gibson:
15.

Mr. Pettus:
What page is it?

Mr. Gibson:
15.

"Q. Have you got a good memory?

"A. Yes, sir.

"Q. This happened just about a month ago, didn't it?

"A. Yes, sir.

"Q. And you mean to tell this Commissioner you remember nothing that happened inside that garage?

"A. No.

"Q. You don't remember a human being that was there except Mr. Anderson?

"A. Howard Anderson.

"Q. Do you remember anybody else that was in there?

"A. No, sir, I don't.

"Q. How long did you stay in there?

"A. About maybe 20 minutes.

"Q. How come you to come out?

"A. I went home.

"Q. Weren't you unconscious while you were in there in any way?

"A. No.

"Q. How did you get a notion to get out of there?

"A. I just took a notion to go home.

'Q. Did you just walk out of the meeting?

"A. Yes, sir.

"Q. Did you leave any of them in there?

"A. There may have been a few.

"Q. Well, were there?

"A. There may have been a few."

Were those questions asked you and did you make those answers when you gave your deposition?

A. I did.

Q. How long in your judgment did you stay in the meeting?

Mr. Byrd:

We object to that as repetition.

The Court:

Overruled.

Mr. Byrd:

We except.

A. I stayed there I imagine about 30, between 30 and maybe 40 minutes.

Q. Now did you hear Mr. Kennedy get up and make a statement about having telephone Jake Paschal?

A. I did not.

Q. Your hearing at that time was normal, was it?

Mr. Byrd:
We object to that.

The Court:
Overruled.

Mr. Byrd:
We except.

A. I imagine it was. It has been a good while ago.

Q. Well, you know it was, don't you?

A. Yes.

Q. Did you hear Mr. Otts get up and make some statement to the people there?

A. He may have. I don't recall if he did.

Q. You say you don't remember about that?

A. No. sir, I don't.

Q. Did you hear Reese Thomas have anything at all to say?

A. Not that I remember.

Q. Did you hear Reese Thomas say that anybody who wouldn't go out on strike to save another workman's job had a yellow streak up his back?

A. Not that I remember.

Q. Did you hear anybody say that?

A. I don't remember of anybody saying anything to that.

Q. Did you hear any reference to the word "pickets" in the meeting?

A. No, sir, I didn't.

Q. Did you hear anyone say "I don't want to picket; I want to be on the baseball bat detail", or words to that effect?

A. Not that I remember of.

Q. You would remember it if you had heard an unusual thing like that, wouldn't you?

A. I imagine I would.

Mr. Byrd:
We object as argumentative.

The Court:
Overruled.

Mr. Byrd:
We except.

Q. When you and Reese Thomas met down at the Passenger Station on Monday, how long had you been there?

A. I don't know how long I had been there; not too long.

Q. You went down there with Red Pennington, didn't you?

A. I think I did.

Q. What business were you and Red planning on transacting at the Passenger Station on Monday morning?

A. Not any; we were just riding around.

Q. Where had you started from, up at the main gate?

A. I am not sure, but I think I got in the car with him at Rex's Barbecue.

Q. And drove to the Passenger Station?

A. That's right.

Q. How lorg did you stay there?

A. 10:00 or 10:30, it may have been a little later.

Q. When did you get there?

A. It must have been around—it was after 9:00 o'clock. I don't remember what time it was.

Q. What did you do all the time while you were down there?

A. Well, I walked up to the corner there on Morris Avenue and 20th Street, stood around a while, and went over to the cafe across the street and drank a cup of coffee, and sat around in there a while and talked.

Q. Who did you talk to?

A. I don't remember who it was. I may have talked to some of the waitresses in there.

Q. I'm talking about while you were standing that hour and a half on Morris Avenue.

A. I didn't stand no hour and a half on Morris Avenue, I was in the cafe part of the time.

Q. How much of the time?

A. I don't know.

Q. You didn't flag down or yell at Reese Thomas somewhere between the Passenger Station and Boyles, did you?

A. No, sir. I was there on Morris Avenue and 20th Street.

Q. You left there with Reese, didn't you?

A. Yes, sir.

Q. And you then went to the Master Mechanic's gate?

A. Master Mechanic's gate.

Q. What was your business at the Master Mechanic's gate?

A. We just rode by there.

Q. You rode by, just riding around, to the Passenger Station with Red Pennington, stayed there a while, then were still just riding around. you and Reese Thomas went to the Master Mechanic's gate?

A. That's right.

Q. That's what you tell this jury?

A. Yes, sir.

Q. All right, sir. You were there when Ben Mitchell and Mr. Woelde came up there?

A. Yes, sir.

Q. Wasn't Letchman there?

A. I don't remember whether he was there whenever we first drove up or not.

Q. Was he there at any time while you were there?

A. He came up there where we was at.

Q. Was Jody Johnson there at any time while you were there?

A. He was not.

Q. Sir?

A. No, sir, he was not.

Q. He was not?

A. No, sir.

Q. What about C. S. Hawkins, was he there?

A. I don't know whether Hawkins was or not. There was somebody in the car that never did get out. I don't know who it was.

Q. Reese Thomas' car was parked blocking the gate, wasn't it, afoul of the gate, wasn't it?

A. It was parked there by the gate.

Mr. Taylor:

Your Honor, that is highly repetitious. He has been over it.

The Court:
I sustain the objection. Let's not repeat the evidence.

Mr. Pettus:
Your Honor, we have a couple of short witnesses that would like to be used now, and get rid of them if we could, if we could break in.

The Court:
Are you through with this witness?

Mr. Pettus:
If they are through with him. He will be available of course in the morning if they want to ask him anything further.

Q. Mr. Barnett, tell the jury whether or not you are the man who shouted at R. E. Thomas inside of the Boyles Yard on Sunday night "Labor trouble; get out of the yard", or anything like that?
A. I did not. I was not in the Yard from around 7:30 after I left the South Yard until I went back to work
Q. You never were up around the Yard Office either, were you?
A. No, sir. I was not.

Mr. Gibson:
All right, sir, you can stand aside.

(Witness excused.)

Mr. Taylor:
Call Mr. Jack Wall, please.

JACK WALL, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Is this Mr. Jack Wall?

A. Yes, sir.

Q. Are you a switchman with the L&N?

A. Yes, sir.

Q. And you were so employed back on October 24, 1955?

A. Yes, sir.

Q. Do you belong to any labor organization on the Railroad?

A. I do.

Q. All right. what is that?

A. Brotherhood of Railway Trainmen.

Q. Now, Mr. Wall, I want to direct your attention to this. Well, I will ask you first if you recall that work stoppage that occurred in October, of last year?

A. Yes, sir.

Q. Directing your attention to Monday, October 24, I will ask you what time you went to work that day, what time was your shift due to go to work that day?

A. 7:55 a. m., sir.

Q. Did you come to the Boyles Yard there for the purpose of going to work that morning?

A. Yes, sir.

Q. What entrance did you come to?

A. The Master Mechanic's gate.

Q. What did you see when you got there?

A. Well, Mr. Baum and Mr. Dewey Cavins is the only ones that I saw at that time.

Q. Were there other people there?

A. Later, yes, sir.

Q. Could you see inside of the Yard?

A. Well, from that vantage point, very little.

Q. Could you hear any activity inside of the Yard?

A. No, sir.

Q. In your experience as a switchman out there for several years, what did that indicate to you?

A. That something was wrong.

Q. Did you have any discussion with anybody about what was wrong?

A. No, sir, I didn't discuss it with anyone, what was wrong.

Q. What did you do, if anything, then, Mr. Wall?

A. Well, I stood and talked to Mr. Baum a few minutes. just general conversation. And later there was some others showed up, and of the group there was a remark made "Let's walk in and see how things look", and we walked on in, looked around, was gone about five minutes, and come back out.

Q. Did you go in with that group?

A. Yes, sir.

Q. About how many were in that group?

A. Oh, six, five or six.

Q. Do you know whether or not they were all of one craft or not?

A. Yes, sir.

Q. What were they?

A. They were all switchmen.

Q. All switchmen?

A. Yes, sir.

Q. Did anybody say anything to you when you started in?

A. No, sir.

Q. Did anybody offer any resistance to your going in?

A. No. sir.

Q. Did anybody threaten you in any way?

A. No, sir.

Q. Did anybody say anything to you when you came out?

A. No, sir.

Q. Now, I believe that is the only time you were around the Yards durring the work stoppage, is that correct?

A. Yes, sir, that's the only time.

Mr. Taylor:

That's all I have. Answer these gentlemen's questions.

Cross Examination.

By Mr. Simpson:

Q. Mr. Wall, isn't that the crowd that you went in with, didn't you also have Mr. Chapman, a fireman, to go along with you?

A. That I don't remember, Mr. Simpson.

Q. You haven't been around the Courtroom here during this testimony, have you?

A. No, sir.

Q. Do you know Mr. Chapman, a fireman?

A. Fireman?

Q. What?

A. Is he a fireman?

Q. Yes, sir.

A. Yes. sir, I know Mr. Chapman.

Q. You know Mr. Chapman, a rather big fellow?

A. Yes, sir, that's right.

Q. Did you see him out there that morning?

A. I don't remember.

Q. Did Mr. Baum ask you—first, when you got there and saw Mr. Baum standing there near you, he was standing near the entrance to the Master Mechanic's gate, wasn't he?

A. He was standing in the vicinity, yes.

Q. He was accompanied by another fireman named Cavins, wasn't he?

A. Well, as well as I remember they were not standing together.

Q. Well, they were standing there near the entrance, weren't they?

A. Mr. Cavins' car was parked to the left of the entrance. and he was at his car, and Mr. Baum was on the other side, as well as I remember.

Q. Mr. Baum didn't have a car, did he?

A. No, sir.

Q. He was down there picketing that gate, wasn't he, to keep people from going in?

A. No, sir.

Q. And he told you what was going on?

Mr. Taylor:

Let him answer the question.

Mr. Simpson:

I beg your pardon.

A. Mr. Simpson, there was no pickets, so far as—there was no pickets to my knowledge. There was no sign of any, or any indication of any picketing going on.

Q. You had been through a strike in August, hadn't you, the switchmen had struck in August. didn't they?

A. No, sir, I don't know anything about any—

Mr. Taylor:
We object to that.

A. —switchmen's strike.

The Court:
I sustain the objection.

Q. You are used to seeing a strike with picket signs, signs carried by pickets, aren't you?
A. The only strike I ever saw with any pickets, I mean of signs being carried, was in the March strike.
Q. In the March strike?
A. Yes, sir.
Q. Did you have any signs in the August strike? That was the wildcat strike too, wasn't it?
A. No, now wait a minute, I didn't say nothing about it being a strike.
Q. Well, what was it, a work stoppage?
A. I don't know what it was. I just laid off and didn't report, I didn't go to work.
Q. Did you report sick in August?

Mr. Byrd:
We object to that.

Mr. Simpson:
I withdraw it. I am not going into the August strike.

The Court:
Let's not try another matter.

Mr. Simpson:
No, I am not going to.

Q. But you expected to see pickets with signs marching around there, and unless they had signs, marching around, you tell the jury there wasn't any pickets there, don't you?

Mr. Byrd:
We object.

The Court:
Sustained.

Q. Would you call a man a picket if he didn't have a sign?

A. Unless he made a definite statement that he was picketing, I wouldn't call him a picket, unless he had a sign of some kind.

Q. Unless he admitted he was a picket or had a sign?

A. Yes, sir, he would have to admit to me he was picketing before I would

Q. I understand. Therefore you don't think Mr. Baum was picketing, because he didn't admit he was?

A. No, sir. I am not going to say he was a picket because he didn't act like one.

Q. I realize you are not going to say he was a picket.

A. He made no effort to stop me in any way.

Q. When you got there and addressed Mr. Baum you didn't know what the trouble was, did you?

A. I didn't ask Mr. Baum what the trouble was.

Q. I didn't ask you that. I said did you know what the trouble was.

A. No, sir, I didn't know what the trouble was, no, sir.

Q. And you walked up there to a man standing there, not knowing what the trouble was, saw the Yard shutdown, and you didn't ask him what it was, did you?

A. When you've been around a place 16 years and you walk up to it and see no activity whatsoever, you know something is wrong.

The Court:

Gentlemen, let's not argue with each other, either one, the question or the answer.

Q. You think that if I did that, I would walk up to a man, Mr. Baum, who was there, standing there—

Mr. Taylor:

We object.

Q. —and not ask him what the trouble was?

Mr. Taylor:

We object to what the witness thinks.

The Court:

Sustained.

Q. You tell this jury in that situation, not knowing what the trouble was, you had been working there 16 years, and you walked up, and find Mr. Baum standing there at the gate or near the gate, and you didn't ask him what the trouble was?

Mr. Taylor:

We object to that.

A. I walked up—

The Court:
I sustain the objection to that question.

Mr. Simpson:
All right.

Q. Now, Mr. Wall—

The Court:
He hasn't answered yet.

Mr. Simpson:
I thought you sustained the objection.

The Court:
I overruled the objection.

Mr. Simpson:
I thought you were getting as impatient as I am to get away from here. I beg your pardon.

Q. Did that sort of a thing happen?
A. May I have the question again, please?
Q. No, I'm not going to take time to ask it again, we'll just call that one off. You don't have to answer it.

The Court:
Let's have order, gentlemen.

Q. Now, Mr. Wall, you say you did know Mr. Chapman?
A. I don't—
Q. And you did go through that Yard that morning with a bunch of switchmen?

A. We walked over to the Yard Office.

Q. Over to the Yard Office?

A. Yes, sir.

Q. I will ask you if it is not a fact, in the crowd you were with Mr. Chapman went with you, and went through the Yard to see if there was anybody in that Yard?

A. No, sir.

Q. And when you came out, you reported to Mr. Baum that there wasn't anybody in there?

A. No, sir, Mr. Chapman—

Mr. Simpson:

You can come down, please, sir.

A. Mr. Chapman wasn't in that crowd, no.

Mr. Simpson:

Come down.

(Witness excused.)

Mr. Taylor:

J. W. Huckaby.

The Court:

How long will it take?

Mr. Taylor:

I will ask him three questions.

The Court:

If you will ask him just three questions I will let you put him on, otherwise we will recess.

J. W. HUCKABY, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. This is Mr. J. W. Huckaby?

A. Yes, sir.

Q. You are an engineer with the L&N Railroad?

A. Yes, sir.

Mr. Taylor:

It might be four or five, Your Honor.

Q. And were you on October 24, 1955?

A. Yes, sir.

Q. Was H. M. Baum your fireman at that time?

A. Yes, sir.

Q. During the work stoppage that occurred in October, did you go to the Boyles Yard on Monday morning?

A. Yes, sir.

Q. Did you see anybody restrained from going into the Yard there?

Mr. Simpson:

We object to that as a conclusion.

A. No, sir.

The Court:

That would be a conclusion.

Mr. Simpson:
It invades the province of the jury.

The Court:
I sustain the objection.

Q. Did you see anybody threatened while you were there?
A. No, sir.

Mr. Simpson:
We object to that.

The Court:
Overruled.

Q. Did you see anybody struck while you were there?
A. No, sir.
Q. Did you see anybody intimidated in any way while you were there?
A. No, sir.
Q. Did you see Mr. Baum there?
A. Yes, sir.
Q. Was that your normal place for reporting for work?
A. Yes, sir.
Q. Was that the gate you went in?
A. Yes, sir.

Mr. Taylor:
I believe that's all.

Cross Examination.

By Mr. Simpson:

Q. Did you know whether work was going on in there, Mr. Huckaby?

A. I didn't know it until I got over there.

Q. You didn't know whether work was going on or not?

A. It wasn't that you could hear or see.

Q. You assumed it was, didn't you, before you got there?

A. Yes, sir.

Q. You didn't know anything about a work stoppage?

A. No, sir.

Q. Or strike, did you?

A. No, sir.

Q. Did you ask Mr. Baum what the trouble was?

A. Well, sir, I don't know. Baum was over there. Somebody said there wasn't anything going on, everything was out.

Q. You saw Mr. Baum standing there at the M&M gate, didn't you?

A. Yes, sir.

Q. The Master Mechanic's gate?

A. Yes, sir.

Q. And he was the first man you spoke to, wasn't he?

A. I don't remember.

Q. Did Mr. Baum tell you there was labor trouble, and stay out of the Yard?

A. No, sir.

Q. He didn't tell you that?

A. No, sir.

Q. Who told you there was labor trouble?

A. He said they wasn't working, there wasn't any work going on, everybody was out, even the office and all.

Q. Who told you that?

A. I don't remember who it was. There was a bunch of men standing there.

Q. That was at the entrance?

A. Yes, sir.

Q. Who was your fireman?

A. Mr. Baum.

Q. Mr. Baum was your fireman?

A. Yes, sir.

Q. And you saw your fireman standing there?

A. Yes, sir.

Mr. Simpson:

Judge, I'll quit. That's all.

Mr. Taylor:

That's all, Mr. Huckaby. That's all, you may be excused.

(Witness excused.)

The Court:

Gentlemen, don't talk to anybody about the case, and be back in the morning at 9:00 o'clock.

(Whereupon, at 4:45 p. m. an adjournment was taken until 9:00 a. m., Friday, September 28, 1956.)

Friday, September 28, 1956,
9:00 A. M.

The Court:

All right, gentlemen, you may proceed.

DONALD E. MULLINS, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you please state your name?

A. Donald Eugene Mullins.

Q. Where do you live?

A. At Roebuck Plaza, Birmingham.

Q. What do you do?

A. I am a clerk for the L&N Railroad.

Q. Are you employed as a clerk for the L&N Railroad now?

A. Yes, sir.

Q. Are you a member of a labor organization?

A. Yes, sir.

Q. What organization are you a member of?

A. Brotherhood of Railway Clerks.

Q. Brotherhood of Railway Clerks?

A. Yes, sir.

Q. In October, of 1955, were you also employed by the L&N?

A. Yes, sir, I was.

Q. And you were a clerk at that time?

A. Yes, sir.

Q. Where was your place of duty?

A. At the General Yard Office, Boyles.

Q. At the General Yard Office at Boyles?

A. Yes, sir.

Q. Do you recall the work stoppage that occurred on Sunday, October 23?

A. Yes, sir, I do.

Q. Were you working that day?

A. Yes, sir.

Q. What shift were you working on?

A. Second shift, 3:00 to 11:00.

Q. What was the first indication that you had that the work stoppage was in progress?

A. When Assistant General Yard Master Porter came in and told the South Yard to shutdown.

Q. At about what time was that?

A. That was approximately 9:00 o'clock.

Q. Tell us what occurred after that, if anything?

A. Well, within a few minutes after he made that statement a few of the men started coming in the office out of the Yard. I would say most of the switchmen were, seemed to be checking the board, taking a last minute look at it before they left. Shortly after they started filing in one man came in and made a remark similar to "All right, let's go", or something to that effect.

Q. One man yelled out "All right, let's go"?

A. To the best of my memory.

Q. Do you know who that man was?

A. No, sir, I do not.

Q. Did he have anything in his hands that you saw?

A. No, sir, not that I noticed.

Q. Look around the Courtroom. Do you see the man in the Courtroom that made that remark?

A. Sir, I couldn't identify him if he is here. I don't know.

Q. You didn't see anyone, you don't see anyone in the room that you identify as being that man?

A. No, sir, I don't.

Q. At about what time was that remark made?

A. I would say five or ten minutes after 9:00.

Q. Five or ten minutes after 9:00?

A. Yes, sir.

Q. Was Mr. Duncan in the same office with you?

A. Yes, sir, he was.

Q. Where was Mr. Mitchell's office?

A. Mr. Mitchell's office is located upstairs, on the second floor.

Q. Upstairs, on the second floor?

A. Yes, sir.

Q. At that time do you recall whether Mr. Mitchell was in his office or downstairs?

A. He had been downstairs about all the time he had been out at the office that night, and I believe he was present in the office then.

Q. After this man called out "Let's go", what did you do?

A. Well, I went over to assist Chief Clerk Duncan to put a turnover in the book, prior to leaving.

Q. How long did that take?

A. Just a minute or two.

Q. A minute or two?

A. Yes, sir.

Q. Then what did you do?

A. Then Duncan and I walked out of the front door together.

Q. How many other clerks, or approximately how many other clerks were in the office there?

A. About eight employees inside of the office.

Q. Were any of them left in there when you left?

A. No, sir, we were the last two out.

Q. You were the last two out?

A. Yes, sir, so far as clerks were concerned.

Q. That is you and Duncan?

A. Yes, sir.

Q. Where was Mr. Mitchell?

A. Mr. Mitchell was still in the office.

Q. Did you see him come out of the office?

A. After we had gotten on the outside, yes, sir.

Q. After you had gotten on the outside?

A. Yes, sir.

Q. Mr. Mitchell was the last out, wasn't he?

A. Yes, sir.

Q. Where did you go then?

A. I went directly to the parking lot where I had my car.

Q. Did you leave the Company premises then?

A. Yes, sir, straight out.

Q. Where did you go?

A. Well, another clerk and I went to Tarrant City, to the Coffee Shop.

Q. You went to Tarrant City?

A. Yes, sir.

Q. Then the next day, did you return to the Boyles Yard at any time, or the vicinity of the Boyles Yard?

A. Yes, sir, I did, but I—

Q. What time was that?

A. About 2:30 in the afternoon.

Q. About 2:30 in the afternoon?

A. Yes, sir.

Q. And where did you go, what particular place did you go to?

A. Well, I went back up to the 39th Avenue entrance, at the parking lot.

Q. What did you see there?

A. Well, there was several people parked and congregated around outside of there, just general small groups in conversation, just standing around.

Q. Was there any work being carried on in the Yard that you observed?

A. No, sir, that is what I went up to see.

Q. Did you go into the Yard?

A. No, sir, I did not.

Q. Did anyone prevent you from going into the Yard?

Mr. Simpson:

We object to that.

A. No, sir, they didn't.

Mr. Simpson:

As a conclusion.

The Court:

I sustain the objection.

Q. Was there any barrier up there to keep you from going into the Yard?

A. No, sir, not as far as a gate being locked or any prominent pickets or anything like that.

Q. Did anyone tell you not to go in?

A. No, sir, it was more or less—

Q How long did you stay around there at that time?

A. I stayed around possibly until around 4:00 or 4:30 in the afternoon.

Q. While you were there, were other Railroad men in the vicinity?

A. Yes, sir, they were.

Q. And were all crafts, did you see some of all crafts there?

Mr. Simpson:

We object to that as leading.

The Court:

It is a leading question. I sustain the objection.

Mr. Pettus.

I don't know how to state it.

Q. Were they all one craft?

A. No, sir.

Q. Or more than one craft?

A. There were several crafts.

Q. Several crafts?

A. Yes, sir.

Q. At about 4:30 you left, you say, 4:00 or 4:30?

A. About that time, yes, sir.

Q. When was the next time you went back to the Boyles Yard?

A. The next afternoon, about the same time.

Q. About the same time?

A. Yes.

Q. Were you working on the 3:00 o'clock shift?

A. Yes, sir, regular.

Q. Did you go in on Tuesday afternoon?

A. If that was the day the first shift went back to work I did. I don't recall. I believe it was—

Q. Do you recall what day the work stoppage was over?

A. I believe it was over on Wednesday.

Q. On Wednesday?

A. The best I remember.

Q. Did you go back to work before the work stoppage was over?

A. No, sir, I didn't.

Q. You did not?

A. No, sir.

Q. Did you go down there each day during the work stoppage at about the same time?

A. Yes, sir.

Q. Each day that you went down there, did anyone tell you not to go into the Company premises?

A. No, sir, not anyone.

Q. Did anyone threaten to do anything to you down there?

A. No, sir, they didn't.

Q. You were not paid for the three days you were off, were you?

A. No, sir, I was not.

Q. When did you go back to work?

A. I was trying to remember my off day. I believe it was on Thursday.

Q. You think you went back to work on Thursday?

A. I believe it was, I'm not sure about that.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Simpson:

Q. Mr. Mullins, counsel asked you if you were threatened by anybody. Did you attempt to go into your place of work either on Monday, Tuesday or Wednesday?

A. No, sir.

Q. Before the work stoppage was over?

A. No, sir, not during the strike.

Q. Not during the strike?

A. No, sir.

Q. You didn't attempt to pass in the gates, did you?

A. No, sir, I didn't.

Q. Nobody, of course, threatened you standing around Rex's or out in the road, did they?

A. Well, I was up at 39th Avenue.

Q. Oh, you were up at 39th Avenue?

A. Yes, sir.

Q. So nobody walked over where you were and threatened you?

A. No, sir.

Q. You saw men standing around the entrance there in a group?

A. Yes, sir.

Q. Whittling, with fires and so forth?

A. No fires, as I remember.

Q. No fires as you remember?

A. No, sir.

Q. Are you sure?

A. I don't believe there was.

Q. All right. You say that about 9:00 o'clock now one man walked into the office and hollered "Let's get out", or "Let's go", or something like that?

A. Yes, sir, that's approximately what he said.

Q. In other words, there were other men out there, around there at that time, weren't there?

A. Yes, sir, there were several.

Q. You didn't mean there was only just one man out there where that voice came from?

A. No, sir, there were several men.

Q. Several men?

A. Yes, sir. This was in the lobby.

Q. There was only one man that called out loud "Let's get out"?

A. Yes, sir, so far as I know.

Q. Or "Get out"?

A. Yes, sir.

Q. That was in a voice that you could hear all over that room, wasn't it?

A. Yes, sir.

Q. It was loud, wasn't it?

A. Yes, sir.

Q. Is that room as big as this room?

A. No, sir, the lobby is only about one-fourth the size of this room, approximately.

Q. I mean the space occupied by the rest of you, where you work, how big is that?

A. The main office is as large as this.

Q. The main office is or is not?

A. It is approximately as large as this.

Q. That's right?

A. Yes, sir.

Q. It was heard all over the main office?

A. Yes, sir.

Q. It was loud enough to have been heard if anybody had been up there, wasn't it?

A. I don't know about that.

Q. You don't know about that?

A. No, sir.

Q. Anyway, you heard it?

A. I heard it, yes, sir.

Q. It was loud, clear and distinct?

A. Yes, sir.

Q. You understood what he meant, didn't you?

A. Yes, sir.

Q. And you went right out, didn't you?

A. Yes, sir.

Q. Were you afraid to stay there and work after that order had been given?

Mr. Pettus:

We object to that, incompetent, irrelevant and immaterial.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. The question is would you have been afraid to stay there and work?

Mr. Pettus:
We renew our objection on the same ground.

The Court:
Not what he would have been.

Q. Well, were you afraid or scared at the time that order to get out of there came?

Mr. Pettus:
The same objection on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

A. Do I answer the question?

The Court:
Yes, you have to answer the question.

A. Well, sir, I wasn't scared at the particular time. However, I wouldn't have stayed there.
Q. You wouldn't have stayed there?
A. No, sir.

Mr. Pettus:
We move to exclude the answer on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Mr. Simpson:
That's all, Mr. Mullins. Thank you, sir.

Re-Direct Examination.

By Mr. Pettus:
Q. Mr. Mullins, the man that made this remark about "Let's go", was he standing inside of the room or where was he standing?
A. I believe he just came in the door of the lobby.
Q. Just came into the door of the lobby?
A. Just stepped in there.
Q. And called out?
A. Yes, sir.
Q. And the lights were on at that time?
A. Yes. sir, they were.

Mr. Pettus:
All right, that's all.

Mr. Simpson:
Let me ask you one more question, if the Court will permit me.

Re-Cross Examination.

By Mr. Simpson:

Q. You say you didn't see the man that came in there?

A. No, sir.

Q. You didn't recognize him and don't know the name of the man that came in and gave that order, do you?

A. No, sir.

Q. Now, you don't mean to say that that particular man is not in this Courtroom; you say you just don't recognize him?

A. I don't know who he was.

Q. Do you know who turned out the lights there in the Yard Office?

A. No, sir, I don't have any idea.

Q. Did they all go out about one time, cut them at the master switch, or how did they go out?

A. I don't know whether they were cut off or not.

Q. Did you see anybody going around turning out lights one by one there?

A. Not that I recall.

Q. You didn't see that?

A. No, sir.

Mr. Simpson:

That's all.

Mr. Pettus:

That's all.

The Court:

The witness is excused unless there is objection.

Mr. Simpson:
We have no objection.

Mr. Pettus:
You are excused, Mr. Mullins.

(Witness excused.)

The Court:
Call your next witness.

Mr. Taylor:
Mr. Baum.

H. M. BAUM, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:
Q. Is this Mr. H. M. Baum?
A. That's right.
Q. And you are an employee of the L&N Railroad, are you, Mr. Baum?
A. Yes, sir.
Q. And you were on October 23, 1955?
A. I was.
Q. During the time this work stoppage we are inquiring about occurred, is that correct?
A. I was
Q. And in what capacity were you employed at that time?
A. Locomotive fireman.

Q. Are you now a member of a Brotherhood?

A. Yes, sir.

Q. What is that, please?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. Were you a member of that organization during this work stoppage?

A. I was.

Q. Did you receive any pay during the period covered by the work stoppage?

A. No, sir, I did not.

Q. Now, Mr. Baum, when did you first hear about the meeting that was held at Mr. Parker's home?

A. That was Sunday afternoon approximately, I would say about 2:30, maybe a little bit later. I just wouldn't say positively.

Q. Now, prior to hearing about that, had you received any notice or did you acquire any knowledge of the Railroad's intention to abolish the hostler helpers jobs?

A. Only the bulletin that I read about it.

Q. Where did you see that bulletin?

A. In the firemen and engineers washroom.

Q. Did you hear that bulletin discussed?

A. Yes. sir.

Q. Among other employees?

A. I heard that bulletin discussed, oh. several different times, out even in the Yard, by the switchmen and enginemen and the other crafts of the Union out there, and shop men.

Q. There was a very general discussion among the employees?

Mr. Simpson:

We object to that, leading and suggestive

The Court:
Sustained.

Q. Tell us if you will where and how you heard about the gathering at Mr. Parker's house.

A. Well, on Sunday I went to work from 7:00 to 3:00, and about 2:30 someone hollered at me, I don't recall who the man was, and asked me if I was going to Shorty Parker's meeting, and I told him I didn't know anything about a meeting, and he says "They are going to have one there at 4:30." I says "Well, I'll try to be up there."

Q. Before we get to the meeting itself, let me ask you this. Did you attend a Union meeting the Friday night preceding that Sunday that we are talking about?

A. No, sir.

Q. Did you attend a gathering on the street outside the hall after the meeting was over?

A. No, sir, I did not.

Q. You worked your regular shift Sunday, October 23, is that correct?

A. That's right.

Q. Now, what time did you go to Mr. Parker's home?

A. I got there right around about 4:30, something like that, 4:30 or 4:35, right close to there.

Q. Were there others there when you arrived?

A. Oh, yes.

Q. Were they inside or outside?

A. Well, some of them were outside, some were inside.

Q. Was there any person in charge of that meeting?

Mr. Simpson:

We object to that as a conclusion, may it please the Court.

The Court:

Sustained.

Q. Did anybody tell you what to do when you got there?

A. No, sir.

Q. Was there a presiding officer at that meeting?

A. There was no officer at that meeting.

Q. Was it a formally conducted meeting?

A. No.

Q. Did the person who spoke obtain recognition and speak by themselves, or was there general discussion going on?

A. Well, it was a general discussion.

Q. Among groups of people?

A. That's right.

Q. At the same time?

A. That's right.

Q. Now, Mr. Baum, without taking up the time and asking you to identify the people you saw there, you have heard testimony about that. Does your recollection coincide with the people you have heard being identified as being at the meeting?

A. Oh, yes, yes, sir.

Q. Now, if you will, Mr. Baum, explain to the Court and the gentlemen of the jury what you heard discussed at that meeting, and what you yourself said?

A. Well, I personally didn't have any statement to make myself, but the general discussion was as to the abolishing of the hostler helpers jobs, the outside

hostler helpers jobs, and what would be done in replacing them, or where we could get them back to work, and there was no one, so far as that goes, even took charge of the meeting.

Q. Do you recall any remark that you yourself made?

A. No, I do not.

Q. Did you ever discuss the whole group at any time while you were there?

A. No, I was sitting back by the garage door. I was just listening.

Q. Now, will you explain to the jury the duties of an outside hostler helper with regard to the responsibility for safety?

Mr. Simpson:
We object to that as being immaterial.

The Court:
Sustained.

Mr. Pettus:
We except.

Mr. Taylor:
All right, sir.

Q. About how long did the meeting last?
A. Approximately, about 30 minutes.
Q. How did you get to the meeting?
A. I drove my car.
Q. Did anybody accompany you?
A. No.
Q. And how did you leave the meeting?
A. I drove my car back.

Q. Now, at this meeting did you ask anybody, or make any statement to anyone directing them to prevent any L&N employee by force or threats of force from going to work?

A. I did not.

Q. Did anyone tell you or ask you to prevent any L&N employee from going to work by force or threats of force?

A. They did not.

Q. Did anyone tell you to intimidate any L&N employee?

A. No, sir.

Q. Did you tell anyone else to intimidate any L&N employee?

A. I did not.

Q. Did you hear any discussion in your presence or hearing, anything about that?

A. No, sir, I did not.

Q. Now was the meeting still in progress when you left, or did you leave with the group?

A. I left by myself.

Q. Where did you go when you left the meeting?

A. I went home.

Q. Now, do you have any judgment as to the time that you got home?

A. I would say about 5:15 or 5:20, something like that. I wouldn't say for sure what time I got there.

Q. Now, when were you next scheduled to go to work, your shift next scheduled to go to work, Mr. Baum?

A. At 7:00 a. m. Monday morning.

Q. Did you have any conversation with the roundhouse or the Engine Dispatcher on Sunday night?

A. No, sir, I did not.

Q. Was there anybody at your home when you got there Sunday night?

A. Yes, sir.

Q. That is besides your family?

A. Outside of the family, yes, sir.

Q. Who were those people?

A. Mr. and Mrs. Harmon Wright, neighbors, across the street, and my stepson and his wife.

Q. Was that a social call?

A. That's right.

Q. Now, how long did Mr. and Mrs. Wright stay there?

A. It was some time around 9:00 or after before they left.

Q. Were you there all the time they were there?

A. I was.

Q. Was your wife there?

A. She was.

Q. What did you do the remainder of Sunday night?

A. I stayed home.

Q. All right, sir, now Sunday night do you know whether or not there was a work stoppage on at the Boyles Yard?

A. I didn't know it until I reported for work at 7:00 a. m.

Q. When did you get down to the Boyles Yard on Monday morning?

A. I got there approximately at 6:30, the general time.

Q. You were then working the shift that commenced work at 7:00 o'clock, is that correct?

A. That's right.

Q. Is that the time ordinarily that you reported there for that shift?

A. That's right, about 6:30.

Q. Now, where did you go when you got to the Boyles Yard?

A. I went down to 39th Street, what they call the powerhouse gate.

Q. Tell the gentlemen of the jury and the Court what you saw, if anything, when you got down there.

A. Well, when I got down there about 6:30 that morning, there was a group of men standing around, and they said there was nothing working inside. So I stayed out there with them.

Q. Did you hear any activity in the Yard from where you were?

A. Not from where I was, no.

Q. If any activity was going on could you have observed it from where you were?

A. Sir?

Q. I say if any activity was going on, could you have heard it from where you were?

A. Well, I believe I could, yes.

Q. Who did you say that you recognized at that 39th Street entrance at that time?

A. Well there was a switchman, Jack Wall, Louie Wilkes.

Q. What occupation does Mr. Wilkes have?

A. He is a switchman.

Q. Anybody else?

A. George Britton, he's a switchman, and the engineer that I worked with.

Q. What is his name?

A. J. W. Huckaby.

Q. That is the gentleman, Mr. Huckaby, that testified here late yesterday afternoon?

A. That's right.

Q. All right. Did you have any conversation with Mr. Huckaby?

A. Yes, sir.

Q. What did you tell him and what did he tell you, if anything?

A. He come down there and asked what the trouble was, and I said "I understand there is labor trouble inside." So he says "Well, I'll stay around here a few minutes", and he left and went on home. He asked me if I was too, and I says "No, I'm going to stay around here a few minutes."

Q. How long did you stay there?

A. I stayed there until approximately about 2:30 or a quarter to 3:00.

Q. Was that the time your shift would have concluded had it worked that day?

A. That's right.

Q. Did anyone tell you to come to that gate at 6:30 on Monday morning?

A. There ain't nobody told me to come there.

Q. Did anybody tell you how long to stay there?

A. No.

Q. Did anybody tell you when to leave?

A. No.

Q. All right, sir. Where did you go when you left there on Monday afternoon?

A. I went home.

Q. Approximately what time did you arrive there?

A. Oh, I would say—well, I left there about a quarter to 3:00. It takes about 15 minutes to go home, maybe a little longer.

Q. And did you leave home that evening?

A. Yes, sir, I did.

Q. Where did you go?

A. I went to pick up my wife at Buckeye.

Q. I will ask you was she working downtown?

A. She was working at Buckeye.

Q. That is Western Grain, or Buckeye Feed & Grain?

A. Yes, sir, that's right.

Q. Or whatever the name is?

A. Yes, sir.

Q. Where did you go after you picked her up?

A. We went to Britling and ate supper.

Q. Where did you go then?

A. We went to the Alabama, to the show.

Q. Did you return to your home after that?

A. I did.

Q. Did you remain at home all evening?

A. I did.

Q. All right. Would your shift have gone to work Tuesday morning at 7:00 o'clock if it had worked?

A. It would.

Q. Where did you go, if anywhere, on Tuesday morning?

A. I reported back at 6:30 to the main powerhouse gate again.

Q. Did anybody tell you to go down there at that time?

A. No, sir.

Q. What did you see when you got down there at that time?

A. There was still a group of men hanging around there.

Q. Did you see or hear any activity in the Yard?

A. I did not.

Q. Do you recall any of the people you saw down there on Tuesday?

A. Yes, the same crowd was down there on Tuesday as there was on Monday, maybe a little larger.

Q. Did you see anybody threatened while you were there?

A. No, sir, I did not.

Q. Did you see anybody physically struck?

A. No, sir.

Q. Did you see anybody restrained from entering the premises?

A. No, sir, I did not.

Q. Did you yourself threaten anybody?

A. I did not.

Q. Did you yourself use any physical force against any person there?

A. I did not.

Q. How long did you stay there on Tuesday?

A. I imagine about a quarter to 3:00, something like that.

Q. And where did you go when you left?

A. I went home.

Q. What did you do that evening, did you stay at home?

A. No, I went to pick up my wife at Buckeye's, had supper, and then went bowling at L-Mac Bowling Alley.

Q. Who did you go bowling with?

A. If I am not mistaken, Jerry O'Conner, let's see, Jerry O'Conner, Jimmy Snyder, and myself, and Clarence Flege and Hiram Welsh. We all bowl together on a regular league bowling team.

Q. Are you on a bowling team?

A. That's right, I am on a regular bowling team.

Q. Was that the regular meeting night for your team to bowl?

A. That's right.

Q. What time did you leave the bowling alley?

A. Approximately 11:05 or 11:10, something like that.

Q. Where did you go then?

A. I went back home.

Q. Did you spend the remainder of that night at home?

A. I did.

Q. All right. If you left your home Wednesday morning, where did you go?

A. I went back down there, reported regularly at 6:30.

Q. Had anybody told you to go back down there at 6:30?

A. No, sir.

Q. What did you see on Wednesday morning when you got down there?

A. I saw the same Wednesday morning as I saw Monday and Tuesday.

Q. How long did you stay down there?

A. About a quarter to 3:00, something like that.

Q. Where did you go when you left Wednesday?

A. I went back home.

Q. Did you stay at your home on Wednesday evening?

A. I did not.

Q. Where did you go, sir?

A. To pick up the wife, and we had supper, and I went bowling on another league bowling team, Stovall Electric Company. I bowled on their league team on Wednesday night.

Q. How long did you bowl on Wednesday night? What time did you leave the bowling alley?

A It was after 11:00.

Q. While you were at the bowling alley, up to the time you left, did you know whether or not the work stoppage had been concluded?

A. I did not.

Q. When did you next go to work after the work stoppage was over?

A. Mr. Taylor in my—I remember in my deposition I did make a statement I went, I thought it was on Friday, but they called me Thursday morning about 5:00 o'clock to report for 7:00.

Q. Your best judgment is that you received a call Thursday morning?

A. That's right.

Q. And whom did you receive that call from?

A. The Engine Dispatcher.

Q. Is that the only time you were contacted by the Engine Dispatcher from Sunday night until that time?

A. That's right.

Q. Now you had not laid off, had you, Mr. Baum?

A. No, sir, I hadn't.

Q. No official of the Railroad had tried to contact you, had they?

Mr. Simpson:
We object.

Q. As to work being available?

Mr. Simpson:
We object to what somebody tried to do.

The Court:
Sustained.

Q. Well, did any Railroad official contact you until Thursday morning, Mr. Baum, at 5:00 o'clock?

A. There is no one contacted me only the telephone call from the Engine Dispatcher, Mr. Jordan, asking me to report for work at 7:00 o'clock.

Q. And did you report for work at 7:00 o'clock?

A. I did.

Q. Now, Mr. Baum, you have heard some testimony here by Mr. Ben Mitchell to the effect that you and Tommy Davis and a man named Myrick came in the Yard Office on Sunday night and told the people in there to leave. Were you in the Yard Office of the L&N Railroad at Boyles Yard on Sunday night, October 23?

A. I was nowheres near or around the Boyles Yard Office Sunday night.

Q. On Sunday night did you tell anybody to get out of the Yard, or get out of anywhere else on the L&N premises?

A. No, sir, I was not even around there. I couldn't tell nobody that.

Q. Now, Mr. Baum, during the course of this three day work stoppage, did you order anybody not to work at the L&N Yard?

A. I did not.

Q. Did you threaten anybody?

A. I did not.

Q. That wanted to work?

A. No, sir, I did not.

Q. Did you instruct any other person to use force or threats of force to prevent any other person from working for the L&N?

A. I did not make no threats.

Q. During this three day work stoppage did you see or hear any person threatened to keep him from going to work?

A. No, sir, I did not.

Q. Did you see any person physically restrained from going to work?

A. No, sir.

Mr. Taylor:

That's all, Mr. Baum. Now, answer Mr. Simpson's questions.

Cross Examination.

By Mr. Simpson:

Q. Mr. Baum, I believe you say that you didn't see anybody physically restrained or stopped from entering the Yard during this three day stoppage that the strike was on, is that right?

A. That is right.

Q. Did you see anybody enter the Yard during those three days?

A. Yes, there were some switchmen that went in there. I don't know what they went for.

Q. They went in there with Mr. Chapman, a fireman, to see that there was nobody in there early Monday morning, didn't they?

A. Now, I couldn't tell you whether he was with them or not, I don't know.

Q. You saw that crowd go in to see that there was nobody in the Yard?

A. There was some men went in there, but I couldn't—

Q. What time Monday morning did they go in?

A. My good gracious, I just—to be honest with you I couldn't tell you what time they went in.

Q. Well, what time did you get there Monday morning?

A. I got there about 6:30.

Q. Was it after you got there?

A. Oh, yes.

Q. About how many men were in that crowd that went in there?

A. Oh, I think, as near as I can recollect, I don't think there was over—I know there wasn't over six or seven, I don't think, that went in there, that I know of.

Q. Did you see the whole gang or whole crowd?

A. I didn't pay any attention to who went in there myself, to be honest with you.

Q. Do you know how long they stayed in, or did they come out at the same entrance they went in?

A. They come out at the same place they went in.

Q. Did they report there was anybody in there?

A. I didn't hear them say whether there was anybody in there or not.

Q. You didn't hear them report at all?

A. No.

Q. Now aside from those, did you see anybody go in?

A. No, sir.

Q. You did not?

A. I did not.

Q. Not a soul during the time you were there?

A. No, sir.

Q. And you were there from 7:00 o'clock until 3:00 on three days?

A. About a quarter to 3:00, something like that.

Q. From about 7:00 to 3:00?

A. Yes.

Q. And at the same gate?

A. That's right.

Q. Did you tell this jury that you did not agree with anybody to stand watch or stay at that gate from 7:00 until 3:00 on those days?

A. My assignment went to work at 7:00 a. m., and I reported to that gate.

Q. I realize that you told us that.

A. That's right.

Q. But I asked you if you agreed with anybody that you would stay there at that gate, stand around that entrance from 7:00 until 3:00 on those days that the strike was in effect?

A. No, sir, I did not.

Q. You deny that?

A. No, sir; I deny that.

Q. Do you know Mr. Louie Wilkes?

A. I do.

Q. You saw him when your attorney put him on the stand and examined him here?

A. Yes, sir.

Q. The other day?

A. Yes, sir.

Q. How long have you known Mr. Wilkes?

A. Well, let's see, I have been with the L&N right around a little over 11 years, and I have known Louie Wilkes, oh, approximately about 5 years, something like that, that is personally acquainted with him.

Q. You referred to him as a switchman. As a matter of fact, he is a promoted switchman, isn't he, isn't he a conductor?

A. Sometimes he is a switchman, sometimes a con ductor, sometimes he helps. He is, one day he might go out there—if you will permit me to say this I will explain that to you. Is it all right, to explain to him what I mean by that, switchman and foreman?

Mr. Simpson:

I don't think it is objectionable. I am not insisting that he explain unless his counsel wants him to.

The Court:

All right, proceed with your question.

Q. You don't need to bother to explain it if you don't want to. You say he was either a switchman or a conductor?

A. Yes, sir, that's the way we call that, a switchman.

Q. I am just trying to identify him. Do you recall hearing him testify here?

A. I do.

Q. I will ask you whether or not while you were standing out there at that entrance on Monday, the 24th, Mr. Louie Wilkes walked up to you and asked you if it would be all right for him to go in the Yard?

A. Mr. Wilkes didn't walk up to me. Mr. Wilkes called me over there where he and some men were discussing it.

Q. I just asked you the question, did Mr. Wilkes ask you if it would be all right for him to go in the Yard.

A. Yes.

Q. What did you say to Mr. Wilkes?

A. I told him I wasn't no picket, and I didn't have no authority to stop him.

Q. You deny that you were a picket?

A. That's right.

Q. And after Mr. Wilkes asked your permission, he did actually go in the Yard, didn't he?

A. Now, that I couldn't swear to.

Q. You couldn't swear to that one way or the other?

A. I couldn't swear to that, because I don't know.

Q. Did Mr. Wilkes explain to you why he asked you over there, called you over there to ask you for permission to go into the Yard?

A. He did.

Q. Why did he say?

A. He said his Local Chairman had sent word that they was to go in the Yard Office and stay a certain length of time, and if no work was available, they was to turn in a time slip for the time they had been in, and return out.

Q. Now, that was his explanation about why he wanted to go in?

A. Yes.

Q. We understood that, he told us that.

A. He told me that too.

Q. What?

A. He told me that out there too.

Q. That's right, there's no question about that.

A. Yes.

Q. Did he tell you why he selected you as being the one of whom he would ask permission to go in?

Mr. Pettus:
We object to that, as to why.

The Court:
Overruled.

Mr. Pettus:
We except.

A. That I couldn't say.

Q. Didn't he say he understood that was a firemen's strike?

A. He didn't say anything about a firemen's strike, he just said he understood there was a work stoppage in there. I didn't know anything about a firemen's strike.

Q. Well, you heard Mr. Wilkes testify?

A. I did hear him testify.

Q. Now, aside from the group of switchmen that went through the Yard for a clean up early Monday morning—

Mr. Taylor:

If the Court please, just a minute, we object. There has been no testimony from this witness that they went through there for a clean up. He couldn't possibly testify as to the intention of the group.

Mr. Simpson:

I didn't say anything about what this witness testified.

The Court:

Overruled, until he finishes his question.

Q. Aside from that group of switchmen that went through that Yard early Monday morning, and Mr. Wilkes, did you see anybody else go in, enter the premises of the L&N Railroad through either of those gates where you were present?

A. I was only present at one gate.

Q. During those three days?

A. I couldn't vouch for the other gate. I don't know.

Q. Your answer is you didn't see anybody else go into the gate where you were?

A. No, sir.

Q. You were not at any other gate?

A. No.

Q. Well, now, would you have considered it dangerous to go in there, Mr. Baum?

Mr. Taylor:
We object to that.

Q. Were you scared to go in?

The Court:
Sustained.

Q. To go in there yourself?

Mr. Taylor:
We object.

The Court:
Overruled.

Mr. Taylor:
We except.

A. I think I said in my deposition that there were about 30 or 40 men standing around there. It really was not safe.

Q. That's exactly the point I wanted to make. There were 30 or 40 men standing around there, some whittling, some of them not whittling, around that entrance, and under those circumstances you would not have considered it safe to enter that gate, would you?

A. I didn't say anything about men being around there whittling.

Q. Well, let's leave the whittling out.

A. All right.

Q. With those 30 or 40 men standing around that gate, you would not have considered it safe to go in there, would you?

Mr. Taylor:
We object to that.

A. I was in that 58 day strike.

The Court:
Overruled.

Q. That's the point, you had seen people try to do that, hadn't you?

A. Not only there, but other places too.

Q. You had seen what happened to people who tried to go in that gate?

Mr. Taylor:
Just a minute.

Mr. Simpson:
He brought it up, if the Court please.

Mr. Taylor:
We move to exclude his volunteer statement, and object to the question.

Mr. Simpson:
I don't see how he could exclude his own witness's statement, Your Honor.

The Court:
Overruled.

Q. Now, you based that on what you had seen happen in the 58 day strike, among other things, didn't you?

Mr. Taylor:
Just a minute. We object to that.

A. I didn't say I was scared to go in, Mr. Simpson.

The Court:
I didn't get that question exactly.

(The question was read.)

The Court:
Sustained.

Mr. Simpson:
We except.

Q. What did you mean by you had been through the 58 day strike, Mr. Baum?

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Pettus:
We except.

A. I wouldn't like to answer that.

The Court:
Overruled.

A. What did I mean by the 58 day strike?
Q. What do you mean, you had seen the 58 day strike?
A. I was an authorized picket in the 58 day strike at 30th Street.
Q. What had you seen then that made you think it was dangerous, going in this time?

Mr. Pettus:
We object.

Q. With 40 or 50 men standing around?

The Court:
You mean you are referring to this particular work stoppage, rather than the 58 day strike?

Mr. Simpson:
No, sir, I—

The Court:
I sustain the objection if you refer to the condition in the 58 day strike.

Mr. Simpson:
I know the Court has been,—has kept that out of it, and I would not have attempted, and certainly don't intend under the Court's instructions to bring it in, but this gentleman brought up what he had seen in the 58 day strike.

The Court:
I sustain the objection.

Mr. Simpson:
Does the Court rule that I should not pursue that line of questioning?

The Court:
Yes, I think if we get into the other strike—

Mr. Simpson:
All right. We except.

Q. Now, Mr. Baum, you were asked this question and made this answer, didn't you, with respect to that?

Mr. Pettus:
What page is that on?

Mr. Simpson:
Well, he said it several times, 54, 55, and 56 are the places I am looking at right now. On 55, I think that is probably as good as any of them.

Mr. Taylor:
55?

Mr. Simpson:
Yes, down about two-thirds of the way down, Mr. Taylor.

Mr. Simpson: (Reading)
"Q. When you got down there on Tuesday morning, state whether or not you were afraid to enter the gate?

"A. I stated it once before.

"Q. State it again.

"A. I didn't think it safe to go in there under conditions of labor trouble."

Mr. Taylor:

We object to the mental condition of the witness.

The Court:

Overruled.

Q. Did you make those statements, were those questions asked you and were those answers made by you on your examination in November, on November 21, 1955?

A. I think I stated that just now.

Q. Yes, sir, all right. Well, I won't ask you about any of the others.

Now, you say that at Mr. Parker's house that Sunday afternoon you have nobody to add to the list that was there?

A. No, sir.

Q. If the Court would permit me I would like to read the list of people were that have been mentioned, and ask you if those were present. Mr. Howard Anderson?

A. That's right.

Q. Mr. Bruce Barnett?

A. Right.

Q. Mr. Baum?

A. Right.

Q. Yourself?

A. That's me.

Q. Mr. J. M. Brown, Jr.?

A. Right.

Q. Mr. Grissom?
A. Right.
Q. Mr. M. L Hall?
A. Right.
Q. Mr. Letchman?
A. Yes, sir.
Q. Mr. McCutcheon?
A. Right.
Q. Mr. Otts?
A. Yes
Q. Mr. Parker?
A. Right.
Q. The host?
A. Yes.
Q. Mr. Howard Southerland?
A. Right.
Q. Mr. Sutterlin?
A. Right.
Q. Mr. Reese Thomas?
A. Right.
Q. Mr. A. R. Thomas?
A. Yes, sir.
Q. Mr. J. M. Weldon?
A. Right.
Q. Mr. Kennedy?
A. That's right.
Q. Mr. Edwards, Fred Edwards?
A. Right.
Q. Mr. Fleming?
A. Right.
Q. Mr. Stuart?
A. Right.
Q. Mr. Logan?
A. Right.
Q. And Mr. Vann?

A. That's right.

Q. Now, was there anybody else that I haven't mentioned?

A. I think that's enough. No, I don't.

Q. Now, Mr. Baum, who was the Local Chairman of the Firemen on your Division at that time?

A. Well, at our regular meetings, and for attending to business, Mr. J. B. Otts.

Q. He was Local Chairman?

A. Yes.

Q. Who was President of the Local?

A. By-golly, I can't tell you, I haven't been to a meeting in so long I don't know.

Q. Wasn't J. M. Brown President at that time?

A. He may have been. I don't know, I haven't been to a meeting in so long, I don't know.

Q. You did not mean that there wasn't any officer of the Local present at Mr. Parker's. Both of those gentlemen were there, weren't they?

A. Mr. Simpson, I understood him to ask me whether there was a presiding officer at that thing. And that's the reason I stated "No." I was under the impression he meant at that meeting, whether there was somebody presiding at the meeting as an officer. But our Local Chairman and Jim Brown were there.

Q. Both our President and Local Chairman were there at the meeting?

A. That's right, they were there at the meeting.

Q. You were not a regular attendant at the Union meetings then?

A. On the shift I was working, no, sir, I couldn't be, because I was more or less working the Extra Board, called out at all times, and when they would have the meetings I would probably be at work.

Q. You usually worked on the first shift, didn't you?

A. Well, if I took a regular assignment.

Q. And the meetings were usually held at night, weren't they?

A. No.

Q. The first shift went off—

A. No.

Q. The first shift went off at 3:00, didn't they?

A. No, they usually were not held at night, some were held during the day.

Q. What?

A. Some were held during the day.

Q. Most of them were held during the evening, weren't they?

A. No, the same amount in the day, I think there was one meeting on day, and one on night.

Q. Anyway you have not been going to the meetings very often?

A. No, sir.

Q. You did go to this meeting?

A. Which meeting are you referring to?

Q. The one at Mr. Parker's house?

A. I did, I was asked to go there.

Q. The one that was called to see about getting those jobs restored?

A. I couldn't tell you what the meeting was before it happened.

Q. Did you hear Mr. Kennedy make any statement at that meeting that Sunday afternoon?

A. Let me see, I don't know whether I did or not, it has been so long ago.

Mr. Taylor:

Speak up, Mr. Baum.

A. I just don't remember whether he made a statement or not, that has been so long ago, I just don't remember.

Q. You didn't hear Mr. Kennedy get up and say he had just talked to Mr. Jake Paschal, the General Chairman of your Union, and Mr. Paschal told him it would be an illegal or wildcat strike, and not to strike?

A. From where I was sitting to where Mr. Kennedy was, he probably could have said something, I don't know. I didn't hear him say anything.

Q. Did you hear Mr. Sutterlin make any statement?

A. No.

Q. Did you hear Mr. Sutterlin express the same opinion that Mr. Kennedy did?

A. No.

Q. Did you hear Mr. J. M. Weldon say anything at that meeting?

A. No, there was just a general discussion among all the men. That's all I can tell you.

Q. I know, but I will ask you did you hear Mr. J. M. Weldon say that he had a baseball bat, and he wanted to be on the bat detail?

A. No, I didn't hear him say that, no, sir.

Q. You didn't hear Mr. Weldon say that?

A. No, sir, I didn't.

Q. Did you hear anybody else speak up and say that?

A. No, sir, I did not.

Q. There in that open meeting in Mr. Parker's garage on that Sunday afternoon?

A. No, sir, because I was sitting at least, well, from where the door was to where all of the men, were probably congregated around, talking, and where

I was, oh, about 10 or 12 or maybe 15 feet. I was sitting opposite the door, by the door in a chair.

Q. You say you were off to one side, and therefore you won't say that that statement wasn't made by Mr. Weldon?

A. Now if it was made, Mr. Simpson, I didn't hear it.

Q. All you say is that you didn't hear it?

A. That's right.

Q. You say you didn't hear Mr. Weldon say it, and you didn't hear anybody else make that statement?

A. That's right. I didn't hear no such statement.

Q. All right. Now, you say you were at one gate only during that entire three day strike?

A. That's correct.

Q. That's the one they have been calling here, you have been sitting here hearing all of the testimony?

A. That's right, I have heard it all.

Q. That's the one most of the witnesses referred to as the powerhouse gate?

A. Right.

Q. At 39th Street?

A. Right.

Q. How far is it from there up to Rex's Barbecue stand, just approximately?

A. Well, in a straight line I would say about four city blocks, maybe a little longer.

Q. Four city blocks?

A. I would say that, about that.

Q. What do you call the entrance opposite Rex's Barbecue stand?

A. Well, I didn't know they had any name for it particularly; it is a footbridge right across from Rex's.

Q. It goes into the call office and the roundhouse, doesn't it?

A. That's right.

Q. All right. Then the next one, further up the Pinson Pike, is another entrance which you call the Master Mechanic's entrance? Is that the way you line them up?

A. No. That one over there at that place, that you refer to, I think the one you are referring to is further north, is that right?

Q. Yes, sir.

A. That is the bridge that goes into the roundhouse, kind of like a parking lot.

Q. Is the Master Mechanic's entrance between the roundhouse entrance and the Rex's Barbecue?

A. Oh my, no.

Q. Where is the Mechanic's entrance?

A. The Master Mechanic's gate is, it is south of there.

Q. South of the powerhouse gate?

A. Yes, I would say three-quarters of a mile, maybe.

Q. South of the powerhouse gate?

A. No, this Rex's Barbecue you are talking about.

Q. I am not making myself clear to you. Let's forget that, I don't think it is important. Were you at the Master Mechanic's gate any time during this strike?

A. No, sir, I was not.

Q. You were never there under any circumstances?

A. No, sir.

Q. Were you present there when Mr. Mitchell and Mr. Woelde came up and went into the property there to see about whether they could find some bills of perishables or livestock?

A. I didn't see Mr. Mitchell or Mr. Woelde at any time.

Q. You tell us that you were not present when Mr. Mitchell—

A. That's right, I didn't see them at any time.

Q. —or Mr. Woelde came up and had the discussion with Reese Thomas about going into the property?

A. I can't vouch for what went on at other gates.

Q. I understand, but you say you didn't see or hear that?

A. That's right.

Q. Now then, I will ask you whether or not you saw Mr. Houts at any time during that strike, Engineer Houts?

A. I don't believe I did.

Q. You heard him testify here, didn't you?

A. I did.

Q. Do you remember what he said, where he said he saw you?

A. Oh, yes, I remember him.

Q. Now, where did he say he saw you?

A. He said he saw me in the Yard Office.

Q. At what time?

A. I should judge right around about 9:00 o'clock, is what he said.

Q. 9:00 o'clock Sunday night, wasn't it?

A. Yes, that's what he said.

Q. How long have you known Mr. Houts, the engineer?

A. Too long.

Q. Too long?

A. Yes, sir.

Q. You don't mean that you—you don't mean by any means to threaten him, do you?

A. I don't mean to threaten nobody, but I don't like a man that lies on me.

Q. And you say Mr. Houts lied when he said he saw you in the Yard Office Sunday night?

A. I'll tell him to his face he did.

Q. I am sure you will. Now then, do you know Mr. Sexton?

A. Yes.

Q. You heard what Mr. Sexton said you said to him, didn't you?

A. Yes, I heard it.

Q. What about Mr. Sexton, is he a liar too?

A. If you call him in and set him right down there I'll tell him what he was.

Q. Yes, you were telling a good many other people around that strike, during those three days, what they were, and what you were going to do to them, didn't you?

A. I ain't said nothing like that.

Q. You tell this jury all was sweetness and light out there so far as you were concerned?

A. So far as I was concerned, yes.

Q. While you stood there in front of that gate for 8 hours on those three days, that everything was lovely, and you were not threatening anybody, or you wouldn't have threatened anybody if they attempted to go in?

A. I didn't stop nobody, and I didn't tell nobody not to go in.

Q. All right. I will ask you whether or not you asked and urged Mr. Sexton to do picket duty at the gate Sunday night, that very night?

A. I never talked to Mr. Sexton.

Q. You didn't have a word to say to Mr. Sexton one way or the other?

A. I did not.

Q. You know Mr. Hobson too, don't you?

A. Oh, yes, sir.
Q. Is he another one of those?
A. (No response.)
Q. He is an engineer I believe?
A. (No response.)

Mr. Simpson:
That's all. I don't believe I want to ask you anything further, Mr. Baum. Thank you very much.

The Witness:
Thank you very much.

The Court:
All right, come down, Mr. Baum.

(Witness excused.)

Mr. Pettus:
Mr. Sutterlin, come around, please, sir.

R. A. SUTTERLIN, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:
Q. Will you state your name?
A. R. A. Sutterlin.
Q. Where do you live?
A. Mount Olive.
Q. What do you do?
A. Locomotive fireman for the L&N Railroad.

Q. Were you a locomotive fireman in October, 1955 for the L&N?

A. Yes, sir.

Q. And what labor organization, if any, were you a member of in October, 1955?

A. Engineers.

Q. That is the Brotherhood of—

A. B of LF&E, Locomotive Engineers.

Q. Brotherhood of Locomotive Engineers?

A. B or LF&E.

Q. That is a different organization from the Brotherhood of Locomotive Fireman, isn't it?

A. Yes, sir.

Q. Who was your Local Chariman in October, 1955?

A. Mr. J. C. Laney.

Q. Mr. J. C. Laney?

A. I believe that is his initials.

Q. Now, did you attend this meeting at Mr. Parker's house on Sunday, October 23?

A. Yes, sir.

Q. Who, if anybody, invited you to the meeting?

A. Well, there was two that invited me.

Q. Who was that?

A. Mr. McCutcheon and Mr. Thomas.

Q. Where were you when they invited you?

A. Well, they was on the engine, and they was bringing the engine to another job that worked by the side of me.

Q. What day did that occur on?

A. Saturday morning, before the strike Sunday—I mean walkout Sunday.

Q. That was the Saturday morning before the Sunday that the walkout occurred?

A. Yes, sir.

Q. What did they say in that conversation to you? What did Mr. McCutcheon say, and what did Mr. Thomas say?

A. Well, I don't remember which one was first. Mr. Thomas called me over on the engine.

Q. Called you over on his engine?

A. Called me over on his engine that he was bringing to the job on the other side of me, to work by the side of me. And I went over there, and one of them told me that the firemen was holding a meeting at Mr. Parker's house Sunday at 4:30, and wanted me to be there. And I told them that I didn't belong to the Firemen's Organization. But they insisted I be there anyhow, because I was a fireman at that time.

Q. Did you go to the meeting?

A. Yes, sir.

Q. And was there anyone there that was not a fireman?

A. Yes, sir.

Q. That you saw?

A. Yes, sir, there was two fellows, but I didn't know who they were.

Q. They were not firemen, but they were at the meeting?

A. Yes, sir.

Q. About how many men were there at the meeting?

A. Well, I don't know, I don't remember.

Q. Did you go to the meeting by yourself, Mr. Sutterlin?

A. Yes, sir.

Q. Or did you go with someone?

A. I went by myself.

Q. Did you go in your own car?

A. Yes, sir.

Q. What was the subject discussed at the meeting?

A. Well, I understood the subject was to try to see about the abolition of these hostler helpers jobs.

Q. Is that the subject that you heard some discussion about at the meeting?

A. That was the purpose of the meeting.

Q. Well, was that subject discussed at the meeting? In other words, did somebody say something about that at the meeting?

A. Well, I don't remember, it come up in a roundabout way, but I don't remember how it did come up.

Q. Do you recall anything that anybody said at the meeting with regard to the hostler helpers jobs, any particular individual?

A. Some things, some things I remember. There was so many talking that I couldn't catch it, you know, just a word every now and then.

Q. Everybody was sort of talking at once at the meeting?

A. Well, there was several different crowds, but there was a big crowd in the middle of the floor, you know, everybody was talking, and I couldn't understand what they was all saying.

Q. Which crowd were you in?

A. I was kind of off to one side, by an icebox there.

Q. You were standing off to one side?

A. Yes, sir, and Mr. Kennedy and Mr. Baum was by the side of me there at the beginning of the meeting; not by the side of me, but on the other side of the icebox.

Q. You all were sort of standing off to one side, is that right?

A. Yes, sir.

Q. Did you say anything at the meeting that you recall?

A. Yes, sir.

Q. What did you say?

A. Well—

Q. Mr. Sutterlin, was this addressed to the whole meeting, or just these two or three men that were just around you there?

A. Well, it was—

Q. Mr. Kennedy?

A. You mean what I said?

Q. Yes, sir.

A. Well, I tried to address it to the whole meeting, but they wouldn't anybody say anything, or back me up in it.

Q. Were they all talking then when you addressed them?

A. There was several talking.

Q. What did you say to the meeting?

A. Well, I told them that they was getting the cart before the horse?

Q. You told them they were getting the cart before the horse?

A. Yes, sir.

Q. Did anybody make any reply to that?

A. Well, Mr. Kennedy—no, I don't believe they did.

Q. You don't believe anybody said anything to that?

A. No, sir.

Q. Did Mr. Kennedy say anything?

A. I beg your pardon?

Q. Mr. Kennedy, did he say anything?

A. Yes, sir.

Q. What did he say, if you recall?

A. Well, he said he talked to Mr. Paschal just a few minutes before this, and Mr. Paschal advised him to come to the meeting and explain to them that they couldn't, the organization couldn't back them up, because it was an outlaw strike, and that they would handle it through the upper channels, you know, proper channels.

Q. Had anybody said that it was being handled through other channels at that time?

A. Well, I don't know. Mr. Otts made the statement that he had talked to some of the officials.

Q. Mr. Otts did?

A. Yes, sir.

Q. Some of the officials of the Company?

A. Yes, sir.

Q. Or the Union?

A. For the Company.

Q. All right.

A. And I believe he said the Union. I am not positive now, because I asked him if he had talked to the Master Mechanic or any of the officials.

Q. What was his reply to that, if you recall?

A. He said that he had talked to—the Master Mechanic I believe was Mr. Quiggins at that time, and that he wasn't going over his head.

Q. He wasn't going over his head?

A. Yes, sir.

Q. Over Quiggins head?

A. Yes, that's right.

Q. Is that what you mean?

A. Yes, sir, that it was up to Mr. Quiggins.

Q. What was it that Mr. Otts had talked to him about?

A. About the abolition of these hostler helpers jobs.

Q. About the abolition of the hostler helpers jobs?

A. Yes, sir.

Q. Now, after Mr. Kennedy made his statement was there any discussion following that?

A. Well, I don't remember right now.

Q. Do you recall anything that anybody else said at that time?

A. Well, there was so much said I couldn't remember it all.

Q. You couldn't remember it?

A. And it has been so long too.

Q. Now, Mr. Sutterlin, did Mr. Kennedy leave, or do you recall what time he left the meeting?

A. They took up about 4:30 and he left about 5:00 or 5:15, approximately.

Q. Approximately that?

A. I would say about 5:15.

Q. Were you still there when Mr. Kennedy left?

A. I left behind him.

Q. You left right behind him?

A. Yes, sir.

Q. Is that right?

A. Yes, sir, there was three men went out the door, and I left behind them.

Q. You left behind them?

A. Yes, sir.

Q. The others were still at the meeting when you left?

A. Yes, sir.

Q. Where did you go when you left that meeting?

A. I went straight home.

Q. You went straight home?

A. Yes, sir.

Q. Did you stay at home that night?

A. Yes, sir.

Q. When was the last time you had worked before the meeting?

A. On Saturday, Saturday night, from 11:00 o'clock to 7:00 a. m. Sunday morning.

Q. You had gotten off at 7:00 o'clock that Sunday morning?

A. Yes, sir.

Q. Did you lay off after the meeting, or did you have a job, or what did you do about that?

A. I laid off that afternoon.

Q. You laid off that afternoon?

A. Yes, sir, about 6:00 or 6:15.

Q. You laid off?

A. Yes, sir.

Q. Did you assign any ground when you laid off?

A. I beg your pardon?

Q. Did you assign any reason when you laid off, to the man that you laid off to?

A. Well, I had a catch in my hip, and my left leg, and I called Mr. Jordan and told him to put me on the off board. He said "You're sick like the rest of them, are you?" And I said "Yes, sir, I guess so."

Q. You really were sick, weren't you?

A. Yes, sir.

Q. All right.

A. I had a catch in my hip. I wasn't sick, but I hadn't had any sleep, and I felt bad.

Q. Mr. Sutterlin, did you go back to the Company property the next day?

A. No, sir.

Q. What did you do Monday, if you recall?

A. Well, I stayed around the house, a little while, when I woke up. And I went to—I don't remember whether I went to the store or not, but I made a trip to Gardendale.

Q. And Tuesday did you go anywhere?
A. No, sir.
Q. You didn't go anywhere?
A. I might have went to the—you know, gone to the store.
Q. Just a short trip?
A. Or the post office, about a mile from the house.
Q. On Wednesday did you go anywhere?
A. Not Wednesday, but I did Wednesday afternoon.
Q. Wednesday afternoon?
A. Yes, sir.
Q. Where did you go Wednesday afternoon?
A. Over to the shop.
Q. Over to the shop?
A. Yes, sir.
Q. What time did you arrive there?
A. I believe it was about 7:30 or 8:00 o'clock.
Q. 7:30 or 8:00 o'clock?
A. As well as I remember now, yes, sir.
Q. Was Wednedsay the night they went back to work?
A. Yes, sir.
Q. And you arrived about when, that time was about 7:30 or 8:00, you say?
A. Somewhere in that neighborhood, between 7:30 and 8:00.
Q. Where did you go, or what point did you arrive at there?
A. The automobile entrance to the roundhouse.
Q. They call these gates by various names. Is that the one—
A. Coming from Tarrant City that is the first entrance.
Q. The first entrance?
A. Yes, sir.

Q. You call it the roundhouse entrance?

A. Yes, sir.

Q. I see.

A. There is a bridge there for cars to go in.

Q. What is the next one?

A. And the next one is Rex's.

Q. The Rex's?

A. What they call Rex's.

Q. Did you see anybody when you arrived there?

A. Yes, sir, I saw a few people, but I didn't know any of them.

Q. You didn't know any of them?

A. I have seen their faces, just like all these other gentlemen here, I have seen their faces. I know their face, but that's all.

Q. Were the men that you saw when you arrived there, were they firemen?

A. No, sir.

Q. They were not firemen?

A. No, sir.

Q. Were they Railroad employees?

A. I believe they were.

Q. You had seen their faces?

A. The biggest part of them were, yes, sir.

Q. But you don't know what crafts they were in?

A. No, sir. Well, I think some of them were—in other words, I believe they were shop men.

Q. You believe they were shop men?

A. Yes, sir.

Q. When you went down there that evening did you have your street clothes or your work clothes on?

A. Well, I had on a pair of overalls—not overalls, but overall pants and shirt, just like I work in.

Q. In other words, you had on your clothes that you work in?

A. Yes, sir.

Q. What did you do after you arrived there?

A. Well, I rolled up there, and there was a crowd on each side of the street, pretty good crowd, and I went into the L&N Cafe across from the roundhouse entrance and drank a Coca-Cola, and come back out and went over there and stood around the fire.

Q. Stood around the fire?

A. Yes, sir.

Q. How far was the fire from the gate, about?

A. From the bridge?

Q. From the bridge, yes.

A. Oh, I guess about 30 or 40 feet.

Q. 30 or 40 feet?

A. Yes, sir.

Q. Now did you go back to work that night?

A. Yes, sir.

Q. What time did you go back?

A. Well, when they said the work stoppage was over a bunch of men out there in that crowd started going across the bridges. I don't know about the other bridge, but the automobile bridge, and I saw Mr. Mulvaney and I don't remember who else cross the bridge, and a bunch of men walking, so I walked in with the rest of them.

Q. When the crowd went back in, you went back in with them, is that right?

A. Yes, sir

Q. You haven't been paid for the time you were off during the strike, have you?

A. No, sir, not a dime.

Q. How is that?

A. Not a dime.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Gibson:

Q. You are not expecting to get paid for not working, are you, Mr. Sutterlin?

A. No, sir, I never could expect to be paid if I didn't do something for it.

Q. Let's go back to Saturday morning.

A. Yes, sir.

Q. Before the strike on Sunday.

A. All right.

Q. You told us I think that McCutcheon and Thomas told you there was going to be a meeting at Shorty Parker's house Sunday night?

A. Yes, sir.

Q. Now, about what time of day or night did they tell you that?

A. It was about, I'm going to say about 6:00 o'clock on Saturday morning.

Q. You were working the third shift?

A. Yes, sir. I got off at 7:00.

Q. Do you know Mr. Parrot?

A. Yes, sir, I was working with him at that time.

Q. He was the engineer on the engine you were on then?

A. Yes, sir.

Q. Was he?

A. Yes, sir.

Q. Did Reese Thomas give you any message or tell you anything to tell Mr. Parrot Saturday morning?

A. Yes, sir, but I have forgotten it.

Q. He did tell you to tell Parrot something, didn't he?

A. Yes, sir.

Q. Now, I want you to take all the time you want to, Mr. Sutterlin, and see if you can remember what he said.

A. (No response.)

Q. Do you remember?

A. No, I don't.

Q. To refresh your recollection, I will ask you if Thomas didn't tell you to tell Parrot that if the firemen had a strike, he didn't want Parrot to let Laney keep him in this time, or words to that effect?

A. It was something like that. Mr. Parrot worked in the other work stoppage or strike.

Mr. Taylor:
We object to that.

A. Strike, yes.

Mr. Taylor:
We move to exclude the voluntary statement.

The Court:
I sustain the objection as to the voluntary statement. That is excluded, gentlemen.

Q. All right, sir. Now, Reese Thomas told you to tell that to the man that you were working with, didn't he?

A. He told me to tell Mr. Parrot that if we struck the firemen struck Sunday. He didn't say Sunday, if the firemen struck, not to let Mr. Laney keep him in there working like he did before.

Q. Laney now is the Local Chairman of the Engineers?

A. Yes, sir.

Q. Did you tell Parrot that?
A. Yes, sir.
Q. What did Parrot say?

Mr. Taylor:
We object to that.

The Court:
Sustained.

Mr. Gibson:
All right.

Mr. Simpson:
The Court sustained the objection, as I understand it.

The Court:
Yes, sir.

Mr. Simpson:
The witness was about to answer.

Q. Now, what time did you get to that meeting at Parker's house, Mr. Sutterlin?
A. At Mr. Parker's house?
Q. Yes, sir.
A. About 4:25 I guess, or 4:30; right close to 4:30.
Q. Did you know when you got there what the meeting was going to be about?
A. No, sir, nothing except the abolishment of those hostler helpers jobs, is what I understood.
Q. Well, Reese Thomas and McCutcheon had told you the meeting was going to be over that, hadn't they, Saturday morning?

A. They told me Saturday morning that they was going to have a meeting at Shorty Parker's to see what they could do about the abolition of these jobs.

Q. So when you got there you knew what the meeting was going to be about, didn't you?

A. Yes, sir.

Q. Now, I believe you said that you heard Mr. Kennedy tell the people there that he had talked to Jake Paschal?

A. Yes, sir.

Q. Jake Paschal is the General Chairman?

A. For the Firemen.

Q. For the Fireman?

A. Yes, sir.

Q. Over the whole L&N System, is that right?

A. Yes, sir.

Q. And Mr. Paschal had told Kennedy to come to the meeting and give the men a message from him?

A. Yes, sir.

Q. That if they had a strike it would be an illegal strike, a wildcat strike, that the Union wouldn't authorize it?

A. Yes, sir, that's what I understood.

Q. And warned the men not to do it?

A. Yes, sir.

Q. You heard him say that?

A. Yes, sir.

Q. What, if anything, did you hear said following that?

A. I believe Mr. Otts said he couldn't tell us to strike or not to strike.

Q. Mr. Otts said he was not going to tell you either way what to do?

A. That's what I understood, yes, sir.

Q. He is the Local Chairman of the Firemen's Lodge, Local, wasn't he?

A. Yes, sir, so far as I knew he was.

Q. And the Local Chairman is the man who handles grievances for the people in his particular Local, isn't he?

A. Yes, sir.

Q. And it is his job to straighten out, if he can, anything that they are dissatisfied about and don't like?

A. Yes, sir, I guess so.

Q. And he told his men that he couldn't tell them to strike or not to strike, didn't he?

A. I think that's what he said.

Q. Yes, sir. You heard Reese Thomas have something to say in there, didn't you?

A. Yes, sir, he said several things, but I didn't catch all of it.

Q. He wanted to "Pull the pin", didn't he?

Mr. Taylor:
We object to what he wanted to do.

The Court:
I sustain the objection.

A. I heard something—

Q. He said he wanted to, didn't he?

The Court:
I sustain the objection.

A. I heard some one say "Let's pull the pin." It sounded like him, but I wouldn't say positive.

Mr. Taylor:
We object to the statement that it sounded like him.

The Court:
I sustain the objection.

Q. You heard it said in there, didn't you?
A. Yes, sir.
Q. Was it said in a whisper or said in a loud voice?
A. In a loud voice.
Q. All right, sir.
A. A pretty good crowd there, and I couldn't hear much of it, but I heard the "Pull the pin" part.
Q. Who was it at that meeting that asked you to picket?
A. Now, I don't remember that now.
Q. Don't you remember testifying on your deposition down here in May, of this year? Don't you remember that?
A. Yes, sir, but that has been quite some time now, and a lot of water went over the mill, over the dam I have forgotten right now; I hadn't give it no thought.
Q. All right, sir, let me ask you if in that deposition these questions were asked you, and these answers given by you:
"Q. Before you left there did you hear or see anything said about pickets?
"A. I don't remember nothing special said about them, I don't believe."
Mr. Pettus, this is page 34.

Mr. Pettus:
Go ahead.

Mr. Gibson:
All right.

"Q. Well, I'm not asking you about anything special, I am asking you if you heard the word 'picket', the word 'picket' mentioned? You can't have a strike or work stoppage without pickets, can you?" And if you didn't answer:

"No, sir.

"Q. All right, sir. Now, did you hear them talking about pickets or picketing?"

And if you didn't make this answer:

"It seems like some one in the group mentioned that we ought to have some pickets, if they struck. I don't know what groups they were.

"Q. Do you remember what man it was?

"A. No, sir.

"Q. Well, did they ask you to picket?

"A. I don't remember for sure. I think they did.

"Q. Somebody in the crowd asked you?

"A. Somebody in the crowd asked me would I be one if they needed me.

"Q. All right.

"A. I'll put it that way.

"Q. Do you remember who asked you to picket?

"A. No, sir."

Were those your answers?

A. Yes, sir.

Q. All right, sir. Now, who was it Mr. Sutterlin who asked you to picket?

A. I don't know. There was so many talking around at that time.

Q. Well, you were paying attention to what was being said?

A. Trying to.

Q. That's the reason you were at the meeting?

A. Yes, sir, I was trying to keep some of them quiet, trying to get them to see Mr. Kennedy's way, and so many was talking at once that I don't think anybody heard anything.

Q. You were listening, and you did some talking?

A. Yes, sir.

Q. All right. I will ask you to tell this Court and this jury if it wasn't J. B. Otts who asked you to picket?

A. No, sir.

Q. Are you sure about that?

A. Yes, sir.

Q. Was it Howard Anderson?

A. No, sir, it wasn't Mr. Anderson.

Q. Now, you know as a matter of fact, Mr. Sutterlin, that you do remember who asked you that, don't you?

Mr. Byrd:

We object to arguing with the witness.

The Court:

Sustained.

Q. You remember it, don't you?

A. Yes, sir.

Q. All right. Was it Reese Thomas?

A. (No response.)

Q. Tell the Court, and tell the jury, was it Reese Thomas or wasn't it Reese Thomas?

A. Yes, sir.

Q. All right, sir. It was Reese Thomas?

A. Yes, sir. Some one else caught me by the arm at that time, and you know, led me up there close to where the main crowd was, but I don't remember who it was.

Q. Where were you when they took the vote?

A. I don't know. I was there in the crowd.

Q. They took one, didn't they?

A. I don't remember what it was, there was so much talk going on, and it has been so long.

Q. Well, you know they took a vote in that meeting, whether or not to have a strike, don't you?

A. That's been a year ago, and it has been so much said that I have forgotten.

Q. Mr. Sutterlin, let's see if we can refresh that recollection on this. We are referring again to the deposition that you gave us in May, of this year. You tell us now that you didn't see them take a vote in that meeting, don't you? Did you say you did not see them take a vote, or you didn't know?

A. I didn't see them, no, sir.

Q. But you know one was taken, don't you?

A. Yes, sir, on something. I don't remember what it was.

Q. Now, that wasn't a very big room you were in, was it?

A. No, sir, it was about 20 by 30 I guess, approximately; pretty good size basement.

Q. And there wasn't anything wrong with your hearing, was there?

A. No, sir.

Q. Well, did you hear a vote called for?

A. (No response.)

Q. Do you understand that question?

A. Ask that question again, will you, please, sir?

Q. I said did you hear a vote called for.

A. Yes, sir, about something, but I don't remember now.

Q. Let me read to you certain questions and answers from your deposition.

A. That has been a long time.

Q. In May of the year 1956, and ask you whether or not these questions were asked you and these answers given by you at that time, beginning on page 30, about a third of the way down the page:

"Q. Now then, who did—you did see them having a show of hands in there, didn't you?

"A. Well, I can't say that I did because I turned my back and was looking at the refrigerator."

Did you make that answer?

A. Yes, sir.

Q. And, reading further:

"Q. At the time this vote was taken you looked away?

"A. Whatever they were doing, yes, sir."

A. Yes, sir.

Q. Did you make that answer?

A. Yes, sir.

Q. And then the question:

"Q. You didn't want to be—

"A. No, sir, I didn't want to be involved in it because I was opposed to a strike, if they wanted to strike.

"Q. So at the time they called for this vote you looked away?

"A. Yes, sir, I couldn't do nothing with them."

Did you make that answer?

A. Yes, sir.

Q. All right.

"Q. You can't tell us who held up his hand on it or not?

"A. No, sir, I don't know that they voted to strike or not.

"Q. You just looked away?

"A. Yes, sir."

Did you make those answers?

A. Yes, sir.

Q. Now, you don't know who voted which way?

A. No, sir, I—

Q. But you did hear a vote called for?

A. Yes, sir.

Q. And that vote was on the question of whether or not to "Pull the pin" or pull the strike, wasn't it?

Mr. Taylor:

May it please the Court we object to that. He has already stated he doesn't know what the vote was for.

The Court:

Overruled. Cross examination.

A. Ask me that question again, please, sir.

Mr. Gibson:

Read it to him, please.

(The question was read.)

A. Yes, sir.

Q. Do you remember when Logan and Vann and Kennedy got up and walked out of the meeting?

A. Yes, sir, when I got ready to leave too.

Q. That vote was taken before then, wasn't it?

A. Yes, sir.

Q. You heard it said that anybody who wouldn't strike to keep another man from losing his job had a yellow streak up his back, didn't you?

A. I heard something to that effect. I don't remember now what it was.

Q. Who said it, if you remember?

A. Now I don't remember who said that, because I wondered what they thought about me, because I didn't vote.

Q. You heard it said that anybody who was not in favor of being a picket, or wouldn't be a picket, should get out of the meeting, or ordered to get out or should be thrown out or something like that, didn't you?

A. Uh—

Q. You heard that said, didn't you?

A. Yes, sir.

Q. Who said it?

A. I am not positive. There was three or four there in the crowd, oh, about as far as from me to this gentleman here (indicating). I think Mr. Barnett and Mr. Anderson and Mr. Letchman were there in that little crowd, as well as I remember.

Q. And after that—

A. They said that they ought to ask Mr. Kennedy and Mr. Vann and Mr. Logan to leave if they were not men enough to protect their jobs. I believe that's the words they said.

Q. Did they then leave?

A. Sir?

Q. Did Logan and Vann and Kennedy then get up and leave?

A. No, sir.

Q. Well then what happened after that?

A. Well that—Mr. Kennedy was by the side of me—not by the side of me, the icebox was between us, refrigerator. Mr. Kennedy, Mr. Logan, and Mr. Baum was over there, and the next thing I knew in the milling around they wound up right in the corner, cater-cornered right opposite from where they were.

Q. Did you stay where you were by the icebox?

A. I was on the—see, this is the icebox, I was on the right side, and they were on the left side.

Q. That is the icebox you were looking at when they took that vote?

A. Yes, sir.

Q. All right.

A. I just turned around and looked at the icebox.

Q. Now after the vote was taken, somebody got busy with a picket list, didn't they?

A. I don't know what kind of list they had, if they had one.

Q. Well, you saw a group of men gathered around one man somewhere in that crowd, didn't you?

A. Yes, sir, there was a pretty good bunch gathered around.

Q. Well, who was that man? Was it Jim Brown?

A. I don't remember now. Mr. Brown was there.

Q. You were paying pretty good attention to what was going on, weren't you, Mr. Sutterlin?

A. Well, yes, sir, but I couldn't hear everything.

Q. Well, you heard some names being called out by a group around one man in the meeting, didn't you?

A. Yes, sir, I heard several names called out by several men I believe.

Q. Whose names did you hear called?

A. Well, I don't remember now.

Q. Tell us one.

A. Mine was one of them.

Q. Oh, your name was called out as a picket?

A. Well, they called my name out and wanted to know if I would be a picket if he needed any.

Q. What did you say? Did you say you would?

A. I told them I didn't want to, but if they had to have any I would be.

Q. Did you give your name to the fellow that was making the list?

A. No, sir, I didn't.

Q. Did you hear anybody else call out your name to the man that was making the list?

A. Yes, sir.

Q. Who was it that called your name out if you know?

A. I don't remember, there was so many.

Q. You don't remember?

A. There was—they called some one else before me. I think I was the second man that they called for whatever they wanted. I don't remember what it was.

Q. Well, you know that was a picket list, don't you?

A. I presumed it was.

Mr. Taylor:
We object.

Q. You presumed it was?

The Court:
Sustained.

Mr. Taylor:
We object to Mr. Gibson's statement after that, and ask that be excluded.

The Court:
All right, that will be excluded, gentlemen, and the answer too.

Mr. Gibson:
I was just quoting him.

Mr. Taylor:

Quoting inadmissible evidence.

Q. Now, Mr. Sutterlin, you left I believe you tell us right after Logan and Vann and Kennedy?

A. Yes, sir.

Q. Did you hear about the meeting down at Rex's later on that night?

A. They said something about going somewhere as I was going out the door.

Q. You knew that there was—

A. Just before I went out the door, rather.

Q. You heard it said for everybody to come down to Rex's that night and go through the Yard and clean it out and get this thing going, didn't you?

A. I don't remember that now.

Q. I will ask you, Mr. Sutterlin, whether or not in May, of 1956, you were asked these questions and made these answers, on page 40:

"Q. You left, and you say, not knowing definitely whether your Railroad was going on strike or not?

"A. Well, I couldn't say it was or wasn't, but I figured they were.

"Q. You figured they were, and you figured what time it was going to happen?

"A. Well, before the third shift went to work.

"Q. You knew the stoppage was coming before 11:00 o'clock, didn't you?

"A. Well, I didn't know it right then because they were supposed to get together later."

Did you make those answers?

A. Yes, sir.

Q. All right, continuing:

"Q. They were supposed to get together later down at Rex's Barbecue, weren't they?"

A. Yes, sir.

Q. And your answer was "Yes, sir", you made that answer?

A. Yes, sir.

Q. And then the question "Well, did they tell you to come down to Rex's Barbecue that night?" And did you answer "Well, they just said everybody."

Did you make that answer?

A. Yes, sir.

Q. Did you hear some one in the meeting say this or this in substance: "I don't want to be a picket, but I do want to be on the ball bat detail", or words to that effect?

A. (No response.)

Q. Do you understand that question, Mr. Sutterlin?

A. Let's see. Ask that again, please, sir.

Q. Tell this Judge and this jury whether or not you heard said in the meeting at Shorty Parker's as or this in substance: "I don't want to be a picket, I want to be on the ball bat detail"?

A. No, sir, I didn't hear that.

Q. Did you hear anything like that?

A. I heard something like that. I have forgotten now what it was.

Q. Did you say it?

A. No, sir.

Q. You know it was said and you heard J. M. Weldon say it, didn't you?

A. No, sir, I don't believe it was Mr. Weldon. It was some one else.

Q. Was it Reese Thomas?

A. Pardon?

Q. Was it Reese Thomas.

A. No, sir, they said Mister—whoever made the remark said "Mr. Weldon wants to be with us on the"—some kind of detail.

Q. Was it the ball bat detail?

A. When they asked Mr. Weldon to be a picket, or if he wanted to be a picket I mean.

Q. Somebody said "Mr. Weldon wants to be on the ball bat detail"?

A. Yes, sir.

Q. Is that it?

A. I believe that was it, something like that, in other words, or something.

Mr. Gibson:

All right, you may come down.

Mr. Taylor:

Just a minute. Your Honor, this witness has given what to me has been surprise testimony concerning one of my clients. I would like the privilege of cross examining him.

The Court:

All right.

Mr. Gibson:

You want to cross examine your own client?

Mr. Taylor:

He's not my client, and not my witness.

The Court:

Gentlemen we are at recess time, and we are going to take a 20 minutes recess.

(A short recess was had.)

Mr. Taylor:
Your Honor, shall I proceed?

The Court:
Yes, you may proceed.

Re-Direct Examination.

By Mr. Taylor:

Q. Mr. Sutterlin, you told Mr. Gibson that, if I understood your testimony correctly, that Mr. Reese Thomas told you or asked you if you would perform picket duty. Is that what you testified to Mr. Gibson a minute ago?

A. He asked me to be a picket.

Q. All right. And I believe you also testified that he had that conversation with you at the meeting at Mr. Parker's house, is that right?

A. Ask that question again, please.

Q. I believe you testified, I am just trying to get the situation correct, I believe you testified a moment ago in response to Mr. Gibson's questions that you had this conversation with Mr. Thomas at the meeting at Mr. Parker's house on Sunday afternoon, is that correct?

A. I didn't have any conversation with Mr. Thomas at Mr. Parker's house.

Q. Well, did you testify, or did you not, a moment ago, that on Sunday afternoon Mr. Reese Thomas asked you if you would perform picket duty?

A. I think he—

Q. I'm asking you what you testified a moment ago. I want to ask you the right questions, but I want to make sure I understand you.

A. He asked me to do picket duty?

Q. I am asking you, sir, if that is what you said just a moment ago when Mr. Gibson was asking you questions.

A. Let me get that question now. You asked me if Mr. Thomas asked me to do picket duty?

Q. No, sir, I asked you if you testified just a few moments ago, when Mr. Gibson was questioning you, if you didn't say at that time that Mr. Thomas asked you if you would do picket duty?

A. No, sir.

Q. What did you testify when Mr. Gibson asked you about that?

A. Mr. Thomas said I—let me see, Mr. Thomas said "He'd make a good picket."

Q. Is that what you told Mr. Gibson a minute ago?

A. I told him he wanted me to do picket duty.

Q. All right. Now—

A. I believe that's what I told him.

Q. When you gave your deposition back up here in May, of this year, you didn't say anything about Mr. Thomas asking you to do picket duty, did you?

A. No, sir.

Q. Who was the first person you told that Mr. Thomas asked you to do picket duty?

A. I told these lawyers.

Q. Is that the only time you have ever said it?

A. Yes, sir.

Q. And you didn't say it when you were up here and gave your deposition in May, did you?

A. No, sir.

Mr. Simpson:

We object. It doesn't appear that he was asked.

The Court:

Overruled.

Q. And the same lawyers asked you about it at that time, didn't they?

A. I beg your pardon.

Q. These same lawyers here asked you about it at that time, didn't they?

A. I don't remember.

Q. All right. Now, did you ever have a head injury when you were a child?

A. Yes, sir.

Q. What was the nature of that injury?

A. I got a fractured skull at a baseball game.

Q. Did a portion of your skull have to be removed?

A. Yes, sir. I told Mr. Pettus about it this morning. He asked me about it.

Q. Was there any plate or anything put in your skull?

A. No, sir.

Q. Was there a depression or hole in your skull for a long time?

A. Yes, sir.

Q. Is it still there?

A. No, sir, there is a dent there.

Q. Now, have you had any conversation while this trial has been going on with a man named Laney?

A. No, sir.

Q. You haven't stood out there in the hall and talked to Mr. Laney on many occasions while this trial has been going on?

A. I spoke to him, but not about this.

Q. Well, you spoke to him, haven't you?

A. Yes, sir, but not about this trial.

Q. All I asked you was if you spoke to him?

A. Or anything concerning it. Pardon?

Q. All I asked you was if you spoke to him.

A. Yes, sir, I spoke to him. I spoke to you and the rest of these gentlemen.

Q. I didn't ask you that. How many times did you talk to Mr. Laney since this trial has been going on?

A. Well, I spoke to him yesterday.

Q. He was a witness brought up here by the L&N Railroad, is that right?

A. I don't know whether he was or not, I didn't ask him.

Q. Mr. Laney is an official of the Engineers Organization?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Do you engage in any outside activity?

A. No, sir.

Q. You are in the television repair business, aren't you?

A. I've got a hobby of television repairs.

Q. Don't you repair television sets and get paid for it?

A. If anybody wants to give me anything, I take it, yes, sir.

Q. Well, they do give you something on occasion for repairing television sets, don't they?

A. Yes, sir.

Q. Are you familiar with the rules of the Railroad that say that you cannot engage in outside activities?

A. Yes, sir.

Q. You say yours is just a hobby, is that right?

A. Mine is just a hobby. Anybody has a right to have a hobby.

Q. Let me ask you this. Mr. Sutterlin, you made a statement to Mr. Robey about this case, didn't you?

A. No, sir, I don't know the man, and still don't know him.

Q. Regardless of whether you know his name or not, you made a statement to an L&N official or somebody employed by the L&N Railroad about this case, didn't you?

A. No, sir.

Q. You say you never did?

A. No, sir; no other official, or no one else either, except Mr. Pettus, I talked to him about it.

Q. Are you telling this jury that the first time you ever spoke those words about Reese Thomas asking you to picket was when Mr. Gibson asked you that question a few minutes ago?

A. Ask that again, please, sir.

Q. Are you telling this jury that the first time you ever told anybody that Reese Thomas asked you to picket was when you told it on that witness stand a few minutes ago?

A. Yes, sir.

Q. That's the first time you ever told a living soul?

A. Yes, sir. There's a lot of other things that I could tell, but I'm not going to.

Q. Now, Mr. Sutterlin—

A. Yes, sir.

Q. —getting back to your knowledge of this meeting here, isn't it a fact that you called, made a signal to Mr. Thomas and Mr. McCutcheon on their engine, and got up and asked them if there wasn't going to be a meeting in Shorty Parker's house?

A. No, sir. They called me off of that other engine. I asked them was we getting a swap off, and they said "No, its for the other job. But come over here, I want to tell you something." Mr. Thomas told me that. Then I went over there to see what he wanted.

Mr. Taylor:

That's all, Mr. Sutterlin.

The Court:
Is there anything further?

Mr. Gibson:
You can come down.

(Witness excused.)

Mr. Pettus:
Mr. M. L. Hall.

M. L. HALL, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:
Q. Will you state your name?
A. M. L. Hall.
Q. Where do you live?
A. 137 Springdale Road, Birmingham.
Q. Are you employed by the L&N Railroad Company?
A. Yes, sir.
Q. What do you do?
A. Fireman.
Q. Were you so employed in October, 1955?
A. Yes, sir.
Q. Are you a member of a labor organization?
A. Yes, sir.
Q. What organization are you a member of?
A. Brotherhood of Locomotive Firemen and Enginemen.

Q. Did you work on Sunday, October 23?
A. Yes, sir.
Q. 1955 that is?
A. Yes, sir.
Q. What time did you get off work then?
A. 3:00 o'clock I believe.
Q. 3:00 o'clock?
A. Yes, sir.
Q. Had you heard of a meeting being at Mr. Parker's house on that day?
A. On that day, yes, sir.
Q. Did you attend that meeting at Mr. Parker's house?
A. Yes, sir.
Q. About how many men were present at that meeting?
A. Well, some 15 or 20.
Q. 15 or 20?
A. Maybe 25. I don't remember just how many there were.
Q. Have you got any names to add to those that have been called out here as being present at the meeting?
A. No, sir, not that I know of.
Q. By the other witnesses?
A. No, sir.
Q. About what time did you arrive, or what time is it your recollection that the meeting got underway?
A. Around 4:30.
Q. Around 4:30?
A. Yes, sir.
Q. What was the subject of the discussion?
A. Abolition of the hostler helpers.
Q. Now, did you make any statements at the meeting?
A. Not that I remember of.

Q. Do you recall other statements that were made at the meeting?

A. Well, there was some discussion about the hostler helpers jobs, yes, sir.

Q. Some discussion?

A. Yes, sir.

Q. Do you recall what that was?

A. Well, to get the jobs restored, if the proper channels were taken.

Q. Do you recall anything that was specifically said along those lines? Just state what you recall as to what was said, and who said it, just your best recollection of it.

A. Well, there was several groups talking, I don't remember exactly who said what.

Q. How long did you stay at the meeting?

A. I stayed until it was over.

Q. When was that, about how long did it last?

A. Well, some 25 or 30 minutes I imagine.

Q. When the meeting ended, after the meeting was over, where did you go?

A. I went home.

Q. And how long did you stay there?

A. I don't know. I stayed at home until somewhere around 8:30 or 8:45.

Q. Then where did you go?

A. I went down to Rex's.

Q. And about what time did you arrive at Rex's?

A. I don't know exactly, somewhere around 8:50 I imagine.

Q. Did you stay in the vicinity of Rex's or did you go elsewhere?

A. No, sir, I went up to the Yard.

Q. You went up to the Yard?

A. Yes, sir.

Q. Did you see anybody up there at the Yard?

A. Yes, sir.
Q. Who did you see?
A. Mr. Simrell.
Q. About what time was that?
A. Somewhere around 9:00 or 9:05.
Q. Did you have any conversation with Mr. Simrell there?
A. Yes, sir.
Q. What was that conversation?
A. I asked him if he could sharpen a saw for me the next morning.
Q. Did he say he could or could not?
A. He said he would get it.
Q. He said he could get it?
A. Yes.
Q. Did you have any other conversation with him on that occasion?
A. Not that I remember of.
Q. Did you see anyone else while you were in the Yard?
A. I saw several men working.
Q. Several men were working?
A. Yes, sir.
Q. Did you have any other conversation with anybody?
A. No, sir.
Q. How long did you stay in the Yard?
A. I don't know exactly, just long enough to walk up there to Mr. Simrell's, and straight back.
Q. And straight back?
A. Yes, sir.
Q. By "back" you mean back to Rex's Barbecue?
A. No, sir.
Q. Where did you go then?
A. I went in my car from Rex's Barbecue to the Master Mechanic's gate. I left my car there.

Q. You left your car there?

A. And walked.

Q. Did you get in the car then?

A. Yes, sir.

Q. Where did you go?

A. I went home.

Q. You went home?

A. Yes, sir.

Q. About what time did you arrive at home?

A. About, I don't know, somewhere about 9:30, I imagine, 9:25.

Q. Did you stay at home the rest of the evening or did you go anywhere?

A. No, sir, I stayed at home.

Q. Now, on Monday did you return anywhere to the Rex's or go anywhere in the vicinity of the Boyles Yards?

A. No, sir.

Q. How about on Tuesday?

A. I think I went down there Tuesday morning.

Q. You went down Tuesday morning?

A. Yes, sir.

Q. Where did you go?

A. I went down to the roundhouse I believe, or down to the Rex's, across from the roundhouse.

Q. Down to Rex's?

A. Yes, sir.

Q. How long did you stay there?

A. I didn't stay there very long, I don't remember exactly.

Q. Did you see anybody on that occasion that you knew, that you can recall?

A. Not in particular. There was a lot of men gathering around there.

Q. You are going to have to speak up so we can hear you.

A. All right.

Q. When you were down there did you threaten anyone or have any conversation with anyone that you recall?

A. Not that I recall.

Q. You didn't use any violence on anybody while you were down there, did you?

A. No, sir.

Q. How about Wednesday, what did you do on Wednesday?

A. I don't remember. It seems like I worked some on my house Wednesday.

Q. Worked some on your house?

A. Yes, sir.

Q. Did you go down in the vicinity of the Boyles Yard on Wednesday at any time that you recall?

A. I don't recall if I did.

Q. You don't recall?

A. No, sir.

Q. When did you go back to work?

A. I believe it was Wednesday night.

Q. Wednesday night?

A. The 27th I believe, I am not sure.

Q. Were you off for the three days that the work stoppage was in force?

A. Yes, sir.

Q. And were you paid for those three days?

A. No, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Smith:

Q. Mr. Hall, when you got off at 3:00 p. m. that afternoon, you had finished your shift with the Railroad, had you not?

A. Yes, sir.

Q. You were not due to go back on duty until when, the following morning?

A. No, sir, until they called me.

Q. You had no duties at the Railroad beginning early Monday morning that you had already been assigned to?

A. No, sir.

Q. You didn't have any business in the Yard Sunday afternoon or Sunday night?

A. Not so far as the Railroad is concerned.

Q. Yes, sir. All right. Now, you say that you got to the Parker meeting about 4:30?

A. Somewhere thereabouts.

Q. You got there about the time it started, I take it?

A. Yes, sir.

Q. We won't go into how you heard about it, but you did get to the meeting, and you have heard testimony here, offered, about who was there, and you recall that those people were there do you not, sir?

A. Yes, sir.

Q. All right, sir. Now, you stayed until the meeting was over, you told Mr. Battus?

A. I think it was over, yes, sir.

Q. During that meeting they discussed the hostler helpers jobs, didn't they?

A. Yes, sir.

Q. They discussed procedures to get those jobs back, didn't they?

A. Yes, sir.

Q. That was the main topic of conversation there, wasn't it?

A. Yes, sir.

Q. And the men there recognized that they individually could not do anything about those jobs, getting them back, didn't they?

A. Well, I don't know.

Mr. Pettus:

We object to the question as to what the men realized.

The Court:

Sustained.

Q. And it was said there that individually they could do nothing about getting the jobs back, but that they could band together possibly and do it?

A. I don't remember.

Q. Do you remember something about that?

A. I don't remember any statement like that.

Q. Do you say that was not said there?

A. I don't know. I said I didn't remember it being said, I don't recall it.

Q. Let me refer you to this. Do you remember when you testified earlier in this case, and we had your deposition taken?

A. Yes, sir.

Mr. Smith:

At page 120, Mr. Pettus.

Q. Let me read these questions and answers, Mr. Hall, and see if it refreshes your recollection any extent:

"Q. All right now. I believe you told us that in this meeting up there at Mr. Parker's on Sunday afternoon, the 23rd of October, you all agreed that you could not individually do anything to help Mr. McCutcheon and the other hostler helpers that had been laid off, is that right, by yourself individually, separately?

"A. That's right.

"Q. You couldn't do anything to help?

"A. Yes, sir.

"Q. You agreed on that, I am sure?

"A. Yes, sir.

"Q. But that you would, as I believe has been said, band together to try to help them?

"A. Yes, sir."

I will ask you if those questions and answers weren't made at the time your deposition was taken earlier, pretrial deposition in this case?

A. Yes, sir.

Q. Now, there was some discussion of getting together and helping to get those jobs back?

A. Yes, sir.

Q. Now in discussing ways to get the job back, I believe you said, was there some mention of channels, taking it through channels, is that right, sir?

A. Yes, sir.

Q. Now there also was some mention made of a strike, wasn't there, Mr. Hall?

A. Well, I don't know about a strike.

Q. Well, you recall that at that meeting there was a discussion about whether a strike would be the proper procedure or not, don't you?

A. There could have been, yes, sir.

Q. Well, you recall that there was, don't you?

A. Well, I am not positive about that, I don't recall everything.

Q. You don't have a clear recollection on that?

A. No, sir.

Q. Let me read you a few more questions here. Mr. Pettus, this is page 97.

Let me ask you, as a matter of fact, Mr. Kennedy made a statement there about a strike being unwise, didn't he?

A. He made something, some remark to that effect, yes, sir.

Q. Then there was some mention made of a strike at the meeting?

A. He made mention of it, yes, sir.

Q. Let me read this to you, sir, page 97:

"Q. Well, to refresh your recollection, didn't Mr. Kennedy say if they went ahead and struck under those circumstances it would be an illegal strike?

"A. I believe he said something to that effect.

"Q. He said something to that effect?

"A. Yes, sir."

I will ask you if those questions were not asked you, and those are not the answers that you gave at the time you testified in your pretrial deposition?

A. Yes, sir.

Q. All right. Now, as a matter of fact, the matter of whether or not a strike would be taken, or strike

would be used, was discussed in the meeting generally, wasn't it, Mr. Hall?

A. I don't know that it was discussed generally.

Q. It was discussed, wasn't it?

A. It was discussed.

Q. Yes, sir. Do you recall when the question was put to a vote?

A. No, sir.

Q. You don't recall that?

A. No, sir.

Q. You don't tell this jury that there was no vote taken on the question of whether there would be a strike or not, do you?

A. I am not saying there weren't.

Q. You are not saying that there was not a vote taken?

A. I didn't see one.

Q. You are not telling the jury that it was not done, are you?

A. No, sir, I am not telling them that it wasn't done.

Q. You were in the room during this entire meeting, weren't you?

A. Yes, sir.

Q. You were not looking at the icebox, were you?

A. I don't know if there is an icebox in there or not.

Q. Well, you heard Mr Sutterlin say he was there but he turned his head when the strike vote was taken?

A. Yes, sir.

Q. You didn't turn your head for any reason, did you?

A. No, sir.

Q. Now, I believe after you left that meeting, Mr. Hall, you say you went home?

A. Yes, sir.

Q. You went straight home?

A. Yes, sir.

Q. What time did the meeting break up?

A. Somewhere about 5:00, the best I remember.

Q. A little after 5:00?

A. Somewhere around 5:00.

Q. You went straight home?

A. Yes, sir.

Q. At any rate, when you got home, did you make any telephone calls?

A. No, sir.

Q. You did not?

A. Not that I remember of.

Q. Did you make a call on the way home?

A. Wait a minute,—I called Mr. Jordan and laid off.

Q. Yes, sir. you called Mr. Jordan and laid off?

A. Yes, sir.

Q. And I believe that the exhibit here shows that that was at 5:27. Is that about right?

A. Somewhere about there.

Q. That is approximately the time you laid off?

A. That's right.

Q. Now, Mr. Hall, at that meeting, before you broke up, you all had agreed to show up down at Rex's Barbecue that night about 8:30, hadn't you?

A. No, sir, I didn't come to no agreement to show up there.

Q. Sir?

A. No, sir, I didn't agree with nobody to come down there at 8:30.

Q. Well, it was discussed that people at that Parker meeting would get back down to Rex's Barbecue that night at about 8:30, wasn't it?

A. I don't recall it.

Q. You don't recall that?

A. No, sir.

Q. You won't tell us that wasn't discussed, will you?

A. I say I don't recall it.

Q. Wasn't it also discussed there at that meeting, at the Parker house that afternoon that they would go through those Yards there at 9:00 o'clock Sunday night and clean out the Yard?

A. No, sir I didn't hear that.

Q. You didn't hear that?

A. No, sir.

Q. You didn't hear it said that 9:00 o'clock was the time that you would show up down there and shut-down the Railroad?

A. No, sir.

Mr. Byrd:

We object to arguing with the witness.

The Court:

Overruled.

Q. Is that your testimony, that you didn't hear that?

A. No, sir, I didn't hear it.

Q. All right. But you did get down to Rex's about 8:50, didn't you?

A. Somewhere thereabouts.

Q. And you did go in the Yards at 9:00 o'clock, didn't you?

A. Yes, sir.

Q. And the Yard was going along perfectly normal when you walked in there, wasn't it?

A. Yes, sir.

Q. You had gotten in your car, that was right at Rex's, and driven to the Master Mechanic's gate, and then walked over to the area where Mr. Simrell was working, hadn't you?

A. Yes, sir.

Q. You had to walk through a part of the Yard to get there, didn't you?

A. Yes, sir.

Q. It was a good walk?

A. Yes, sir.

Q. How long in distance would you estimate that to be? Several blocks, isn't it?

A. No, sir, about two blocks.

Q. About two blocks?

A. Somewhere along there.

Q. You passed men working as you went through, didn't you?

A. Yes, sir.

Q. You knew those men, didn't you?

A. Yes, sir.

Q. Tell us who you saw as you walked through the Yard there?

A. They was working. I didn't go close to those men.

Q. Well, you knew them?

A. If I had gotten close to them. It was dark when I went through there.

Q. You don't know whether you knew them or not, is that what you tell us?

A. It may have been.

Q. It could have been, couldn't it?

A. Yes, sir.

Q. But you went through the Yard?

A. Yes, sir.

Q. And you told the jury a little while ago that you went over to see Mr. Simrell?

A. Yes, sir.

Q. You found him where?

A. Standing in front of the shack, south end of the North Yard shack.

Q. You found him at the south end of the North Yard?

A. Yes, sir.

Q. Mr. Simrell had come on duty at 3:00 o'clock that afternoon, hadn't he?

A. I suppose so.

Q. You knew that then, didn't you?

A. Well, his job went to work at 3:00 that afternoon.

Q. He went to work at 3:00?

A. Yes, sir.

Q. You had come off at 3:00 o'clock, hadn't you?

A. Yes, sir.

Q. And you hadn't gone over to that area to talk to him before you left the Yard that afternoon, had you?

A. I didn't work in that area.

Q. Sir?

A. No, sir.

Q. You were working there in the Yard that afternoon, weren't you?

A. No, sir, I got off before he came on.

Q. You said you got off at 3:00 o'clock?

A. Yes, sir.

Q. And he went on at 3:00 o'clock?

A. Yes, sir, but not off of that job.

Q. Yes, sir, but it would not have been any farther for you to go to see Mr. Simrell at 3:00 o'clock in the

afternoon than it was at 9:00 o'clock at night, would it?

A. No, sir.

Q. All right. But you didn't go to see him in the afternoon?

A. No, sir.

Q. While you were already down there?

A. No, sir.

Q. It occurred to you to go to see him at 9:00 o'clock Sunday night?

A. Yes, sir.

Q. All right. Now what did you talk to him about?

A. If he would sharpen a saw for me next morning.

Q. Now, Mr. Hall, you didn't take the saw with you, did you?

A. No, sir.

Q. You got in your car and left your house and drove to Rex's Barbecue, and then you got in your car again and drove over to the Master Mechanic's gate, and then you walked some two blocks through the Yard to see a man that you knew was there in the Yard that afternoon when you went off duty, and you hadn't made any effort to see him, to ask him if he could fix a saw, and you didn't take the saw with you? Is that what you tell the jury?

A. I didn't take it with me, no, sir.

Q. No, sir. Now, as a matter of fact, you had gotten him to sharpen the saw for you about a week before, hadn't you?

A. Some week or so, I don't remember exactly.

Q. The same saw, wasn't it?

A. Yes, sir.

Q. You thought you would go to see him and ask him if he could get that saw and sharpen it for you again?

A. I had, on two or three occasions, I had had saws sharpened.

Q. Now, Mr. Hall, Mr. Simrell said, I believe you told Mr. Pettus that Mr. Simrell said he would pick up the saw, is that what you told him?

A. Who would pick it up?

Q. Didn't I understand you to testify when Mr. Pettus was asking you questions that Mr. Simrell said yes, he could fix it, he would pick it up?

A. No, sir.

Q. He didn't say that?

A. He said he would get it for me.

Q. He said he would get it for you?

A. Yes, sir.

Q. He meant that he would sharpen it for you, is that right?

A. Yes, sir.

Q. Now, Mr. Hall, isn't it a fact that you went up to Mr. Simrell and told him to tell his fireman—who was his fireman, by the way?

A. They said it was R. E. Thomas.

Q. You know Mr. Thomas, don't you?

A. Yes, sir.

Q. Isn't it a fact you went up to Mr. Simrell and told him to tell his fireman to get out of the Yard right away?

A. No, sir. I don't recall that.

Q. Sir?

A. No, sir.

Q. That's not a fact?

A. I don't recall making any statement like that.

Q. You don't recall making any statement like that?

A. No, sir.

Q. I will ask you if it is not a fact that he asked you, Mr. Simrell asked you, Mr. Hall, "What are you fellows doing? Pulling a wildcat strike?" Didn't he ask you that question, Mr. Hall?

A. I don't recall it.

Q. You don't recall that?

A. No, sir.

Q. And didn't you answer that question by saying "You just tell him what I said"? Didn't you tell him that out there?

A. No, sir, I don't remember it.

Q. You didn't?

A. I don't recall that.

Q. You don't have any recollection of that conversation?

A. No, sir.

Q. But you recall about the saw pretty clearly, don't you, Mr. Hall?

A. That's what I went to see him about.

Q. Yes, sir. Now, Mr. Hall, so far as you knew when you went in the Yard that night everything was perfectly normal, is that what you are asking this jury to believe?

A. It was.

Q. It was working when you went in there, wasn't it?

A. Yes, sir.

Q. And you are telling us here, the Court and jury, that it just happened that you went into that Yard to see Mr. Simrell at 9:00 o'clock on Sunday night, is that your testimony, sir?

A. Yes, sir.

Q. That you just happened to go in there to see him about a saw?
A. Yes, sir.

Mr. Pettus:
We object to that as argument.

Mr. Smith:
No, that's not argument.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Are you telling this Court and jury that you just happened to go in there to see him about this saw at 9:00 o'clock?
A. That's what I went for.
Q. That's your testimony?
A. Yes, sir.

Mr. Smith:
I believe that's all.

Mr Pettus:
That's all.

The Court:
Come down Mr. Hall.

(Witness excused.)

The Court:
Call your next witness

Mr. Pettus:
Mr. Breedlove.

O. C. BREEDLOVE, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. O. C. Breedlove.

Q. You are one of the Defendants in the case?

A. I am.

Q. Where do you live?

A. 4317 33rd Avenue North.

Q. What do you do?

A. Locomotive fireman, engineer, and hostler for the L&N Railroad.

Q. Did you have that occupation in October, of 1955?

A. I did.

Q. Do you recall Sunday, October 23, 1955, the day that this work stoppage commenced?

A. Well, I wasn't here all day.

Q. You were not here?

A. No, sir.

Q. You recall the day though?

A. I recall the day, yes, sir.

Q. Had you worked that day?

A. I did, I had come in at 10:54, No. 2 passenger train, a. m.

Q. Then what did you do?

A. Well, I went straight home and I told my family, I said "Let's go to Elmore, we had a wreck at Elmore."

Q. Did you go to Elmore?

A. We went to Elmore to see the wreck, yes, sir.

Q. How far is Elmore from Birmingham?

A. It is, let's see, by highway about 80 or 90 miles.

Q. 80 or 90 miles?

A. Yes, sir.

Q. What time did you arrive at Elmore?

A. Well, I don't know, we stopped on the way and bought the kids ice cream. I had all of the children and my wife with me, and we bought cakes and Coca-Colas, just a family outing, you might say.

Q. Now, what time did you get to Elmore?

A. In the neighborhood of about 4:00 or 5:00—no, I beg your pardon, about around 4:00 or 4:30.

Q. Did you see the wreck?

A. Yes, sir, scattered on both sides of the road, cars out in the field.

Q. Did you then come back to Birmingham?

A. Not directly, no, sir.

Q. But you did come back that day?

A. Later on that night, yes, sir.

Q. About what time did you get back to Birmingham?

A. Oh, we got in around anywhere from 8:30, 45, or 9:00 o'clock, something like that, I don't remember the exact time. That's been eleven months ago.

Q. When you got back to Birmingham did you go home?

A. Yes, sir, went straight home.

Q. You went straight home?

A. Yes, sir.

Q. Did you stay at home?

A. Well, in about 10 or 15 minutes after I got there I went down and checked the board.

Q. Checked the board?

A. Yes, sir. I was on the pool board at that time, and I wanted to see what position I held, whether I would get out that night or not.

Q. Did you check the board?

A. I did, yes, sir.

Q. Where is that board located?

A. That board is located in the firemen and engineers washroom at Boyles, Alabama.

Q. About what time do you recall checking the board?

A. Oh, in the neighborhood of 8:45 or 9:00 o'clock, somewhere along in there.

Q. About that time?

A. Yes, sir.

Q. Now is that customary for you to go down and check the board?

Mr. Simpson:
We object to that, may it please the Court.

A. It is.

Mr. Simpson:
Leading, may it please the Court:

The Court:
Don't lead the witness on direct.

Q. After you checked the board, what did you do, if anything?

A. Well, I went back out to my car and went home.

Q. And went home?
A. Yes, sir.
Q. Did you stay at home?
A. Well, no, sir.
Q. Did you leave home later that evening?
A. About 10:00 o'clock my wife and I, after putting the children to bed, yes, sir.
Q. Then you and your wife left?
A. Yes, sir.
Q. Did you drive around?
A. Sir?
Q. Where did you go?
A. We drove down Vanderbilt Road.
Q. Did you see anybody or do anything on that drive?
A We seen a number of men, yes, sir, coming out the gate, at different places.
Q. How long did you stay out?
A. Oh, I guess we got back home about 10:30.
Q. Was your wife with you?
A. My wife was present with me at the time, yes, sir.
Q. Did you leave the house any further that evening?
A. No, sir.
Q. That Sunday evening?
A. I did not.
Q. On Monday, do you recall where you were?
A. Yes, sir.
Q. Where were you?
A. Monday morning I was at home. I—when the children got up I took them to school, one to—I mean two to Inglenook and one to Phillips High School.
Q. What did you do the rest of the day Monday?

A. Well, after—in coming back from Phillips I came down 12th Avenue to Vanderbilt Road, and I stopped at what they call the Hillside gate down there, entrance to the Wood Yard, and I parked my car at the entrance to that little Ornamental Iron Works there, just out of his driveway, and I sat there a while.

Q. What did you do, if anything?

A. I saw a group of men, maintenance men, signal men, car knockers. painters, and a general run of the mill of the employees out there at the L&N, fireman, a colored fireman, I believe his name was Al Smith, and a bunch of laborers stopped there.

Q. How long did you stay there?

A. Oh, I stayed there for, let's see, I got there at about, oh, in the neighborhood of 8:15 or 8:30, and I stayed there close to 11:00 o'clock.

Q. Did you get out and walk around or were you in your car?

A. I was sitting in my car, yes, sir, and standing on the outside of the car.

Q. Did you do anything that afternoon, Monday afternoon?

A. No, sir. I went and got the children from school.

Q. Did you come back to the vicinity of the Yard Monday afternoon again?

A. No, sir, I drove down Vanderbilt Road there. My family was with me, and we was out sight-seeing, you might say, to see what was happening. They wanted to know too.

Q. How about Monday night?

A. Monday night I spent the night at home.

Q. You spent the night at home?

A. Yes, sir.

Q. How about Tuesday?

A. On Tuesday I believe my wife and I went to Tarrant City and bought a dress pattern for the girl, I just gave her a ride.

Q. Did you go anywhere around the Yard or Rex's or any place on duty?

A. No, sir, I don't think I did. I don't recall that I did or not.

Q. How about Wednesday?

A. Wednesday? Let's see now. No, sir, I don't believe I went around there Wednesday.

Q. Do you know a man by the name of Saylor?

A. Yes, sir.

Q. Who is he?

A. Ed Saylor is a fireman.

Q. Is he the gentleman that testified here earlier in this case?

A. Yes, sir.

Q. Did you have any telephone conversation with him?

A. He called me, yes, sir.

Q. He called you?

A. Yes, sir.

Q. That was during the progress of the walkout?

A. Yes, sir, I believe it was. I don't remember whether it was Tuesday or Wednesday that he called me.

Q. You don't remember whether it was Tuesday or Wednesday that he called you?

A. No, I don't remember the days, no, sir.

Q. Do you recall what conversation you had with him?

A. Well, he asked me what to do, and I told him I was not at liberty to tell him what to do. He said "Well, reckon I ought to go somewhere?" I said "I'll

go to Hillside and sit down there and park, if you want to see what's going on", I said "That's your privilege."

Q. That's where you had been on Monday morning?

A. Yes, sir.

Q. Do you know Mr. Sexton who testified in this case?

A. Yes, sir.

Q. Did you have any telephone conversation with him?

A. I did not.

Q. You did not have any telephone conversation with him?

A. No, sir.

Q. When did you go back to work?

A. I went to work at hostling the third shift Wednesday night. They called me on the board, that's why I stayed at home, I was expecting a call at the time. I was ready to go to work.

Q. You went to work Wednesday night?

A. I went to work Wednesday night. I worked outside hostling job. I went to the Yard and gathered up Diesels out there.

Q. During the time that this work stoppage was in effect did you use any violence on anybody?

A. No, sir.

Q. Of any kind?

A. No, sir.

Q. Did you threaten anybody?

A. No, sir.

Q. Intimidate them?

A. No, sir.

Q. Did you tell anybody else to use violence or threaten anybody?

A. Absolutely not.

Q. You were not paid for the time during the work stoppage, were you?

A. No, sir.

Q. What is your average daily pay?

A. Well, it varies; in the Yard $15.87.

Q. $15.87?

A. Yes, sir.

Mr. Pettus:

All right, that's all.

Cross Examination.

By Mr. Simpson:

Q. Mr. Breedlove, do you know Mr. D. C. Vann?

A. D. C. Vann, yes, sir, I am acquainted with him.

Q. Do you remember whether or not you requested him to do picket duty?

A I did not.

Q. On the 26th?

A. I did not.

Q. Do you know Mr. Vann is a fireman?

A. Yes, sir. I know Mr. Vann. And Mr. Vann has fired for me.

Q. You were sitting in here when Mr. Vann testified?

A. Yes, sir.

Q. If he said that he was mistaken then, wasn't he?

A. He absolutely was.

Q. Do you know Mr. F. L. Fleming?

A. Fleming? Yes, sir, I know Mr. Fleming.

Q. Did you ask Mr. Fleming to do picket duty?

A. I did not.

Q. On Sunday?
A. I did not.
Q. Mr. Fleming is a laborer?
A. Mr. Fleming was a hostler helper.
Q. Yes, sir.
A. And he was cut off, and went back to laboring.
Q. He has a laborer's classification now?
A. He does, yes, sir.
Q. You sat in here and heard Mr. Fleming testify?
A. I did.
Q. What he stated wasn't true?
A. It absolutely was not.
Q. How long have you known Fleming?
A. Ever since I have been with the Railroad.
Q. That's how long?
A. Nearly 14 years.
Q. He has been there longer than you have, hasn't he?
A. I think he has, yes, sir. He was there when I came there.
Q. Vann has been there nearly as long as you have?
A. No, sir.
Q. Vann is a younger man, 8 or 9 years?
A. I was a promoted engineer when Vann began to work there.
Q. Now, do you know Mr. E. L. Sexton?
A. I do.
Q. I will ask you whether or not you on Wednesday called Mr. Sexton and asked him—
A. I did not.
Q. —to do picket duty?
A. I did not.
Q. You heard Mr. Sexton testify—
A. I did.

Q. —to that, didn't you?

A. I did.

Q. Didn't you ask Mr. Sexton to do picket duty because at that time there was a bunch of switchmen trying to go in down at that Hillside gate?

A. I didn't even call Mr. Sexton, Mr. Simpson.

Q. You didn't talk to him?

A. I didn't talk to Mr. Sexton.

Q. And you did not on two occasions ask Mr. Sexton to do picket duty?

A. I did not.

Q. Mr. Sexton's statement was untrue when he was on the stand and said that, was it?

A. Yes, sir, it certainly was untrue. I told Mr. Sexton at no time—I don't even converse with Mr. Sexton, never have.

Q. You won't speak to him?

A. Yes, sir, I speak to anyone that speaks to me.

Q. What do you weigh?

A. I weigh 228 pounds.

Q. You are in good health, aren't you?

A. Yes, sir.

Q. You have kind of got a reputation of being a man who kind of takes care of himself?

A. Not with a bum hand, no, sir.

Q. Have you got a bum hand?

A. I absolutely have. If you would care to see it I would be very glad to show it to you. This hand is wired together.

Q. That's not your right hand, is it?

A. No, sir, its not.

Q. Do you know Mr. C. L. Hobson?

A. I do.

Q. Did you have any conversation with Mr. Hobson about picketing?

A. About picketing?

Q. About anything of the kind?

A. No, sir.

Q. During the strike?

A. No, sir, absolutely not.

Q. Did you tell Mr. Hobson, or did you tell anybody else that the Brotherhood had told you to get pickets together, but to make yourself scarce around there?

A. That's a figment of somebody's imagination. I certainly did not.

Q. You didn't tell anybody that?

A. No, sir.

Q. Did you around 10:00 p. m. on that Sunday night, when things were just moving off, about an hour after—I believe you said you got down to Rex's Barbecue at 8:45 that night?

A. In that vicinity, yes, sir.

Q. When you got down there?

A. About that, yes, sir.

Q. You say you got back from Elmore around, and got down to Rex's around 8:45, just before 9:00 o'clock?

A. I said in the vicinity of that time, yes, sir.

Q. I know you did, you didn't say you got there exactly, I understand, but it was substantially your recollection?

A. To the best of my knowledge, yes, sir.

Q. That was just before the deadline started, just before the 9:00 o'clock deadline for the walkout?

A. I don't even know when the deadline occurred, Mr. Simpson.

Q. All right. Didn't you there around Rex's Barbecue, between 9:00 o'clock and 10:00 o'clock p. m. say in the presence of Mr. Chapman and others

"We've got to get this picket line organized, and get it started. Let's go"?

A. No, sir, I did not.

Q. You saw Mr. Chapman here?

A. I saw Mr. Chapman here, know him well.

Q. Didn't you tell people that you posted as pickets around at the various entrances to tell the folks that the firemen were on strike, and not to go in that Yard?

A. I didn't post any pickets, Mr. Simpson.

Q. All right. Do you know Mr. Chapman?

A. I do know Mr. Chapman.

Q. Did you hear him testify up here?

A. Yes, sir.

Q. All right. Now then, Mr. Anderson assisted you, didn't he?

A. I beg your pardon?

Q. Did Mr. Anderson assist you in this business of getting the pickets?

A. If he did I was asleep, because I don't know anything about anybody assisting me in anything.

Q. I see. Now as that strike moved on, I believe they had a meeting on Tuesday at Ed Weldon's house, didn't they?

A. I couldn't tell you who had a meeting at Ed Weldon's house.

Q. You mean to say that you were not at Mr. Weldon's house on Tuesday?

A. Not that I recall, no, sir.

Q. Now do you mind answering my question?

A. That is eleven months ago. I don't remember whether I was there or not.

Q. Do you know where Mr. Ed Weldon lives?

A. I have been there one time, and I don't know his house number, no, sir.

Q. I don't mean his house number.

A. No, sir.

Q. He is a brother of Mr. J. M. Weldon, one of the Defendants in this case. isn't he?

A. Yes, sir, I know he is a brother of Mr. Weldon.

Q. Do you recall having been at his house on one occasion?

A. Mr. Weldon could have moved for all I know because I went to his house,—it has been 6 or 7 years ago.

Q. I mean his home, in the sense you know that we call our—sometimes we speak of our home as being our house. You probably used the wrong word. You have been in Mr. Weldon's home, wherever it was located?

A. One time as I remember, yes, sir.

Q. When was that?

A. Oh, that has been 5 or 6 or 7 years ago, to the best of my knowledge now.

Q. You remember that very well?

A. Well, yes, because I had a tree cut down in my front yard, and I borrowed two steel wedges from him.

Q. Now that is 6 or 7 years ago?

A. Well, in the neighborhood of 5 to 7 years ago, yes, sir.

Q. I am asking you if you were in Mr. Weldon's home about a year ago, a little less than a year ago, that is on October 25, 1955?

A. Now I don't remember whether I was or not.

Q. You don't remember?

A. No, sir.

Q. You won't tell this jury you were not there, will you?

A. If I was there I certainly wouldn't be afraid to tell them.

Q. Well, I am sure you would not.

A. No, sir.

Q. But you do remember being in his home 6 or 7 years ago, but you can't remember about a year ago?

A. I recall this instance because we had a windstorm and it nearly blowed a tree down on the house, and we had to get outside that night. My family will verify it.

Q. You also recall you had a strike here last October too, don't you?

A. I do.

Q. That's about as important as the windstorm, isn't it?

A. Well, I didn't participate in it in any way.

Q. About as dangerous as a windstorm too, isn't it?

A. It wasn't dangerous, no, sir, no, sir.

Q. I want to get the record straight. You do not tell us that you did not go to Mr. Weldon's house on Tuesday, October 25?

A. Now repeat that question again.

Q. Well, will you tell us that you were or were not at Mr. Ed Weldon's home on the afternoon of Tuesday, October 25, 1955?

A. Now, I don't recall being there, no, sir.

Q. You won't say you were not there?

A. I'll say I wasn't there before I will say I was, because I don't recall of being there.

Q. I didn't ask you that. Well, I think you have made yourself plain, I'll not push it any further.

You know Mr. Alfred Walker, don't you?

A. Yes, sir, I do, a mighty good man.

Q. Don't you remember seeing Mr. Walker out there at Ed Weldon's house that afternoon? Mr. Walker is an engineer, isn't he?

A. Yes, sir, he is an engineer.

Q. He is a tall slender man?

A. Yes, sir, smokes a big black cigar, I remember him.

Q. A fine looking man?

A. Yes, sir.

Q. He is a good man?

A. Yes, sir.

Q. Do you tell the jury you were not up there with Mr. Alfred Walker?

A. Not that I know of.

Q. Didn't you at that meeting say "Gentlemen, let's get these pickets organized, and get them on the job"?

A. No, sir.

Q. You did not?

A. I did not.

Q. Do you know Irvin Rich?

A. Oh, yes, I know Mr. Rich.

Q. You heard him testify here?

A. I did, the man with a crew cut.

Q. You heard him testify here the other day, didn't you?

A. I did.

Q. Did you ask Mr. Rich on October 25, that would be Tuesday, to do picket duty, that some of the switchmen were trying to go to work, and you wanted him to come down there and get on the gate?

A. No, sir, I did not.

Q. And further tell him, when Mr. Rich asked you something about what you were going to do, didn't

you tell Mr. Rich that the Brotherhood had told you personally to stay away from picketing?

A. I didn't tell Mr. Rich, period, nothing.

Q. You heard Mr. Rich testify?

A. I heard Mr. Rich testify.

Q. What he said then wasn't true?

A. Yes, sir, because the last man that Rich talked to, that's the man that's it.

Q. All right. Mr. Rich has told a falsehood then—well, I won't put it that way. What Mr. Rich testified to there on the witness stand wasn't true?

A. It was not true, not a word of it.

Q. Not a word of it?

A. No, sir.

Q. Now, you know Dewey Cavins, don't you?

A. Yes, sir, I do.

Q. Did you see him, Dewey Cavins, on Monday, the 24th, did you ask Dewey Cavins to line up for picket duty?

A. No, sir.

Q. Did you have any conversation with Dewey Cavins of any kind?

A. I don't remember seeing Dewey Cavins during this walkout.

Q. Did you talk to him by telephone?

A. I stayed at home most of the time.

Q. That's exactly the point, you stayed at home and called these people, didn't you?

A. No, sir, I didn't.

Q. Didn't you call Mr. Cavins either on the 24th or 25th?

A. No, sir, I did not.

Q. And ask him to get on the picket line?

A. No, sir, I did not. I was ready to go to work when they called me, that's why I stayed at home,

I was on the board. I never did lay off. Sometimes the L&N Railroad will discipline you if you lose a call. Lots of times they will call an investigation and give you days against your record, and when you accumulate a certain amount of days they will fire you for it. I don't miss calls.

Q. Are you through? Now, you know Mr. Saylor, don't you?

A. Yes, sir.

Q. You have already told your attorney what Mr. Saylor said here wasn't true?

A. I didn't say it wasn't true. Mr. Saylor called me.

Q. Well, regardless of who called the other, did you ask Mr. Saylor to do picket duty?

A. No, sir, I did not. I told him it was his privilege to go down there and sit around if he wanted to.

Q. Did you actually put Saylor on picket duty around 7:30 p. m. on the 26th at Vanderbilt Road?

A. I didn't put anyone on picket duty. There was no pickets, so far as I know.

Q. Did you come the night of this strike, when the strike was over, and relieve Mr. Saylor and tell him the strike was over, he could go on home?

A. When I came from town with my family, my daughters were present, I heard downtown, somebody passed me and said "Ocie, the strike's over, go home." I don't know who it was. They drove on by me.

Q. So somebody downtown told you to go home because the strike was over?

A. On First Avenue, yes, sir, lots of people downtown on First Avenue.

Q. Somebody just walked up to you and says—

A. They didn't walk up to me, they drove past me.

Q. They drove past you and hollered at you?

A. Absolutely so.

Q. So you drove out there then and relieved Mr. Saylor as a picket?

A. I went out 12th Avenue, and as I was going out 12th Avenue, the Vanderbilt Road, I had to pass right by Mr. Saylor. I told him "Let's go to Rex's, I hear the strike is over." He drove out behind me, and went to Rex's.

Q. What was Mr. Saylor doing?

A. Mr. Saylor was sitting off the Company property in his truck.

Q. Just off the Company's property?

A. Absolutely.

Q. At which entrance?

A. What they call the Hillside entrance, the Wood Yard there.

Q. That's where you stayed from 8:00 o'clock to 11:00 o'clock on the first day of the strike, wasn't it?

A. I was sitting in the vicinity of that, yes, sir.

Q. You set your car there, and you sat around the side of your car there at that entrance for 4 hours the first day of the strike, didn't you?

A. When I got there there was already a crowd of men there.

Q. That's the last actual picketing or standing around you personally did, wasn't it?

A. I didn't do any picketing, Mr. Simpson.

Q. I won't argue with you about what that was. But whatever you were doing there, standing there 4 hours by your car, that's the last time you did anything like that?

A. To the best of my knowledge, yes, sir.

Q. To the best of your recollection, yes?

A. Yes, sir.

Q. Now then, getting back to Mr. Saylor again, after this mysterious man hollered at you down here on First Avenue to go home, and you had your family with you, you drove out there and you saw Mr. Saylor out there at the very same entrance where you had spent those 4 hours, didn't you?

A. Yes, sir, he was sitting around there.

Q. Sitting around?

A. Yes, sir. I had to go right by him. The City has built us a road, they call it a street, Vanderbilt Road right around it, it turns one way and went, and then went the other, and turned to the right again.

Q. You told Mr. Saylor "Well, its settled, you can go on home", didn't you?

A. I didn't tell him it was settled, I told him I heard the strike was over, "Let's go to Rex's and see about it."

Q. As soon as you told Mr. Saylor that, he just ups and drives off?

A. I figured he would, I didn't know that he would. He's 21 years old, and could do as he pleases.

Q. You had put him there, and you turned him loose?

A. I didn't put him there, Mr. Simpson.

Q. All right. You know Mr. D. W. Morgan, don't you?

A. Yes, sir, I do.

Q. Did you ask Mr. Morgan, and actually assign Mr. Morgan to picket duty?

A. I did not.

Q. Mr. Morgan is a fireman, is that right?

A. Yes, sir, he is.

Q. Do you know where Mr. Morgan just happened to be standing around some time during that strike?

A. I didn't see Mr. Morgan as I remember during that strike anywhere, Mr. Simpson.

Q. You tell us that you did't put Mr. Morgan on picket duty?

A. I tell you that I did not.

Q. Do you know Joe Saab?

A. Yes, sir, I do.

Q. Did you call Joe Saab during that strike?

A. No, sir.

Q. Did you call Joe Saab and ask him during the strike if he had been keeping on the job down at the L&N station here?

A. Repeat the question, please.

Q. Did you call Joe Saab and ask him if he had been keeping on his post down here around the L&N station?

A. No, sir.

Q. Passenger Station?

A. I did not.

Q. You did not?

A. No, sir.

Q. Joe Saab is a fireman, isn't he?

A. Yes, sir, and an engineer too.

Q. He had been promoted?

A. And a hostler.

Q. Did you call Sutterlin, one of the Defendants over here, and ask him to do picket duty?

A. I did not.

Q. Did you call anybody besides the eleven men I have mentioned, did you call anybody and ask them to do picket duty?

A. Not to my knowledge, no, sir.

Q. You just—if you did, you have forgotten it?

A. I didn't forget it, no, sir. I said I didn't call them to my knowledge.

Q. Yes, sir. All right.

A. I pay my telephone bill. I understand they allow me to call anyone I want to.

Q. I think you are right about that. Didn't you tell Sexton at the time you were asking him to do picket duty that you had credentials authorizing you to post pickets?

A. I did not, no, sir.

Q. You heard Mr. Sexton testify to that?

A. I heard Mr. Sexton.

Q. That was not true.

A. Mr. Sexton is seniority hungry.

Q. I heard you say that he was seniority hungry.

A. No, you did not. This is the first time you heard me say that.

Q. I heard your lawyer say that.

A. Well, then.

Q. Is that the only criticism that you can make of Mr. Sexton, that he is seniority hungry?

A. Well, Mr. Sexton, when you are hostling with him, he likes to do the bossing, tell you what engine to get out.

Q. Mr. Sexton is a pretty good man, isn't he?

A. I couldn't say anything about him except that he doesn't have a personality that I like, no, sir.

Q. You just don't like him? You don't like the fact that he told this jury here that you—

A. Mr. Sexton is very overbearing.

Q. Very overbearing?

A. Yes, sir.

Mr. Pettus:

We object to any further discussion about Mr. Sexton.

The Court:
I sustain the objection.

Q. Have you ever heard anybody say that Sexton was a liar before?
A. Repeat your question, please.
Q. Have you ever heard anybody say Mr. Sexton was a liar before?
A. Several, around.
Q. Who is it that said Mr. Sexton is a liar?
A. The general discussion.

Mr. Pettus:
We object to that.

The Court:
I sustain the objection.

Q. Just general discussion?
A. Yes, sir.
Q. Do you know Mr. W. T. Owens?
A. Yes, sir, I do.
Q. Well, you heard Mr. Chapman testify, didn't you, in this case?
A. Yes, sir.
Q. I will ask you, did you assign Mr. Chapman and Mr. Owens to picket duty together?
A. Well, I have already told you three or four times I didn't assign anyone to picket duty, not a living solitary soul.

Mr. Simpson:
All right, you can come down, please, sir.

The Court:
Come down, Mr. Breedlove.

(Witness excused.)

Mr. Pettus:
Mr. Letchman.

R. H. LETCHMAN, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Will you state your initials and spell your last name so the Reporter can get it down correctly?

A. R. H. Letchman, L-e-t-c-h-m-a-n.

Q. You are a fireman for the L&N Railroad, is that correct?

A. That's right.

Q. And you were so employed by in October, 1955?

A. That's right.

Q. Do you belong to a Brotherhood out there?

A. Yes, sir, Brotherhood of Locomotive Firemen and Enginemen.

Q. Did you belong to that organization in October, of '55?

A. That's right, sir.

Q. Mr. Letchman, of course, you have been in here and heard this discussion about this work stoppage?

A. Yes, sir, that's right.

Q. You recall that, don't you?

A. Yes, sir.

Q. You are a Defendant in this lawsuit, aren't you?

A. That's right.

Q. During that three day work stoppage did you receive any pay from the L&N Railroad?

A. I did not.

Q. What was your rate of pay?

A. Right around $15.00, something like that, a little better.

Q. Per day.

A. That is per day.

Q. Yes, sir. You recall, do you not, that the work stoppage occurred on Sunday, October 23, at night?

A. Yes, sir.

Q. When was the last time you worked before the work stoppage occurred?

A. That day. I got off at 3:55 that afternoon.

Q. You got off at 3:55 Sunday afternoon?

A. That's right.

Q. The 23rd of October?

A. That's right.

Q. Were you working on a regular shift at that time?

A. No, on the Extra Board.

Q. When you left there Sunday afternoon did you have any regular assignment to report back to work?

A. No, just whenever they called me.

Q. You were not supposed to come back until the Engine Dispatcher called you, is that correct?

A. That's right.

Q. All right, sir. On Sunday afternoon, or by that time, had you heard—or first I will ask you did you have any knowledge of the Railroad's intention to abolish the outside hostler helpers?

A. Oh, yes, I heard about it, saw a bulletin out there about it.

Q. Did you hear discussion about the Railroad's proposal?

A. About what?

Q. Around the Yard?

A. About what?

Q. Did you hear discussion about what the Railroad intended to do about abolishing those jobs?

A. Yes, sir, I heard it.

Q. Was that more or less general?

A. Yes, sir, just general discussion, you could hear it around most any place.

Q. Now, you have been identified by several witnesses as having attended a meeting at Mr. Parker's home?

A. Yes, sir.

Q. Were you there?

A. That's right, I was there.

Q. When did you first hear about the meeting?

A. I think that Sunday morning, or either Saturday, the day before that. I won't be positive now, but I believe it was Sunday morning.

Q. You did not attend a Union meeting Friday night?

A. Oh, no.

Q. And you were not in any small group on the street outside of the Union meeting, is that correct?

A. No, I was not there.

Q. Do you recall who told you about the meeting at Mr. Parker's, or where you were when you heard it?

A. You mean at Mr. Parker's house?

Q. Yes, when you first heard about the meeting, where were you?

A. Oh, I don't know, I heard some fellows in the washroom or somewhere down there talking about it.

Q. All right, how did you get to Mr. Parker's meeting?

A. In my car.

Q. How did you get to his house?

A. I went in my car.

Q. Did you take anybody with you?

A. No, sir.

Q. Did you leave the Boyles Shop to go to Mr. Parker's home?

A. No, I went across the street there and was sitting in the cafe, and I was invited to go down there.

Q. All right.

A. Now, that was after I got off from work Sunday afternoon.

Q. About what time did you arrive at Mr. Parker's house?

A. I guess around 4:30.

Q. I won't ask you the list of names of people that were there, you have heard the testimony about it?

A. Yes, sir.

Q. Do you have any other names that you want to add to the list?

A. No, more or less, just the same bunch that has been identified.

Q. Did you know everybody that was there?

A. Well, mostly all the fellows. It seems like there was one or two fellows there I didn't know. That conductor that was up here, I believe he was there, but I'm not personally acquainted with him. It seems like there was another man there, I don't know who he was.

Q. Now, what did you hear discussed at the meeting?

A. Well, they just—for a while there wasn't anything but just a bunch of them discussing things. Then somebody got up, I believe it was Mr. Reese Thomas, and said something to the effect "We are here to discuss ways and means", or something to that effect, "About trying to get these hostler helpers jobs restored."

And somebody suggested, "Well, suppose we have the Local Chairman or somebody take it up with the Master Mechanic, or take it up with Mr. Kirchner." And I believe Otts said he had already discussed it with Mister—with the Master Mechanic, and he stated it was up above him. And that's what was discussed, that's what I heard.

Q. Mr. Letchman, before I forget it, what Seniority Division were you on on October 23, 1955?

A. Birmingham Mineral.

Q. Were other people there on the Birmingham Mineral Seniority Division?

A. No, I believe I was the only one off of the Birmingham Mineral that was there.

Q. All of the rest of them were on some other Division?

A. Main line, or the O&A, or Alabama Mineral we call it.

Q. Was Mr. T. A. Kennedy at the meeting?

A. Yes, sir, he was there.

Q. Do you recall him talking any?

A. No, I don't remember him saying anything, unless he may have spoke to the fellows, or he may have said something to them, but I didn't hear him say anything.

Q. How long did you stay at the meeting?

A. After they got in there, I guess about 10 or 12 minutes, maybe 15.

Q. You say you left after about 10 or 12 minutes?

A. Yes, sir.

Q. Was the crowd still there when you left?

A. Yes, sir.

Q. Were you the first or among the first to leave so far as you know?

A. Well, I believe I was the first one, I don't know. I didn't see anybody else leave, but I believe I was the first one that left there.

Q. You don't have any recollection of whether Kennedy was there or had gone when you left?

A. I believe he was still in there; I am pretty sure he was.

Q. Did you yourself have anything to say at the meeting?

A. No.

Q. Where did you go when you left the meeting?

A. Went home.

Q. Do you have any judgment as to about the time you got there?

A. When I got home, I guess around 10 minutes after 5:00, something like that, maybe a little later, I don't remember.

Q. Did you stay home that evening?

A. Yes, sir.

Q. When was the next time you went down in the vicinity of the Boyles Yard?

A. About 9:45, somewhere, that night.

Q. That was Sunday night?

A. Yes, sir.

Q. Where did you go?

A. Well, I just went to this place—to begin with, the reason I went down there, I asked this Engine Dispatcher that afternoon—I came in first out on the board, and I asked him "Am I going to get to work my run?" He said "Yes, sir, don't you leave, you'll get out for a positive fact, I can promise you, tonight." He says "If I don't use you on the road I'll use you in the Yard." I said "Well, I would like to catch another Yard engine because I get time and a half for it." He said "Well, you stay around the telephone."

And in order for me to get out on my rest it would have been about 11:55, because I had got off at 3:55.

So about 9:15, somewhere along there, I decided I would call him to find out whether I was going to get out on the road or in the Yard, so I would know what to do. So I called him about 9:15, something like that, maybe 9:10, and nobody answered the phone. Well, I said "He's across the street getting some coffee or something", which they do a lot of times.

Well, I waited about five minutes longer, and nobody answered again. I tried to call again, and I waited then about 10 or 15 minutes later and I tried to call again. Nobody answered. I said "Well, I'll go down there because he has done promised me I'm going to get out tonight for a positive fact."

Q. You are telling us you called the Engine Dispatcher's Office on two or three or four occasions Sunday night?

A. Three occasions, I believe.

Q. And no one answered that telephone?

A. That's right.

Q. Was that normal or unusual?

A. Well, its normal and unusual. After three times. But sometimes they are across the street, the Engine Dispatcher is.

Q. All right, how about three times, is that normal?

A. Well, I never thought anything about it. It has happened.

Q. What did you see when you got down there in the vicinity of the Boyles Yard?

A. Well, I just rolled up there at the cafe, Rex's Grill, and I saw a crowd of men around there, and I got out of the car, parked the car and went over there, and I heard some one there talking about as "Dead as a hammer", or something like that over there. And I asked somebody, I says "What's the matter", and they said "They got labor trouble," and I went into the cafe then and tried to call the Engine Dispatcher. I couldn't get him.

Then I heard some of them say he was out. Then I tried to call Mr. Otts and nobody answered that phone. I started to call Mr. DuBose, L. A. DuBose.

Q. Is he your Local Chairman?

A. He is my Local Chairman on my Division. And I happened to think he's out on the run because I saw him going out that afternoon, and I knew he wasn't going to get back before 12:00 or 1:00 o'clock, or I figured that. He went on the Bessemer turn.

Q. Who are some of the people that you saw down there at Rex's, do you have any recollection, do you remember any names?

A. I remember most of them, Tubby Eubanks. I don't remember right now who all was there. Red Fleming, and I think I saw Shorty Parker. There was a bunch of them around there. I knew most all of them.

Q. Was there any activity going on over in the Yard?

A. Not that I could see.

Q. Were there any lights on?

A. I don't remember. It seems like there was a few over there right at the washroom, over there.

Q. How long did you stay down there at Rex's that Sunday night?

A. I guess until about 1:00 or 2:00 o'clock.

Q. What did you do then?

A. I went home.

Q. When was the next time you went about the Railroad premises?

A. Well, I got up about 8:00 or 9:00 o'clock, ate breakfast, and then went back down to the Rex's Grill.

Q. This was Monday morning we are talking about now?

A. Yes, sir.

Q. Did you have occasion that Monday morning to be in the vicinity of any of the gates of the Boyles Yard?

A. Yes, I stayed around there a while, I reckon until about 11:00 o'clock, and then I drove up the road. And I happened to see two or three cars there by the Master Mechanic's Office, and I just drove over there. I got out, and sat in the car.

Q. Was there anybody with you?

A. No, I was by myself.

Q. Who did you see up there?

A. I saw a fellow named Hawkins, fireman on the main line, and then there was several other fellows around there, but I don't know, I never paid any attention.

Q. Was there another car parked there then?

A. I think there was another car or two there, over on this other road that comes in there.

Q. How far was your car away from any other automobile that you saw on this occasion there?

A. Just like—well, this car of Hawkins was parked about 40 feet back over from the gate, something like that, and I just stopped right over there kind of in that direction. I guess I was about 25 or 30 feet from him, 25 feet.

Q. Did you see Mr. Ben Mitchell that day?

A. I sure did.

Q. Did you have any conversation with Mr. Mitchell?

A. No, nothing more than when he came out of the Yard there I asked him—he had went in there to see about getting some cars, or checking some cars for stock or something, and I asked him did he find those cars, and he said "Yes, thank you."

Q. Did you see Mr. Reese Thomas out there that day?

A. I did.

Q. Did you have any conversation in which Mr. Mitchell and Mr. Thomas also participated?

A. No, sir.

Q. Did the three of you have any conference together?

A. No, sir, I did not.

Q. Did you see Mr. Mitchell talking to Mr. Thomas?

A. Yes, sir, I saw him.

Q. Were you close to them when they had that conversation?

A. I guess about 40 feet, something like that.

Q. 40 feet?

A. Something like that.

Q. You didn't hear what they were discussing?

A. The only thing I could hear, I heard the word "cars", or something, some livestock, and I heard Reese tell him "Well, if you want me to go in there and help you find the cars, I'll help you", or something to that effect, and he went on in there.

Q. Were you there when Mr. Mitchell went into the Yard?

A. Yes, I was sitting in the car with this fellow.

Q. Did you call over there and ask what he wanted?

A. Well, after he went in the Yard I hollered out there to Reese, I said "What did Ben Mitchell allow", and he said he wanted to go in there, or was going in there to see about some livestock or something. I said "What did you tell him?" And he said "I offered to go in there and help him."

Q. You have already testified you were there when Mr. Mitchell came out?

A. Yes, sir.

Q. Did you have any discussion with Mr. Mitchell when he came out?

A. Nothing more than I hollered out "Did you find those cars in there?" He had some bills in his hand, and he said "Yes, thank you", or something like that.

Q. All right, when did you leave that gate?

A. Oh, after about 10 minutes, something like that.

Q. Where did you go then?

A. On down to the Rex's Grill.

Q. Did you go around any of the Railroad premises any more on Monday?

A. No, sir.

Q. What did you do on Monday night?

A. Well, that afternoon—I mean I stayed around there a while, and then I went home and ate dinner. And then I came back about 3:00 or 4:00 o'clock, somewhere, stayed around Rex's Grill there.

Q. Did you go around the entrance to the L&N Railroad Monday afternoon at all?

A. No, I don't believe I did.

Q. You did not?

A. I was right there at Rex's Grill with the crowd.

Q. What time did you go home Monday?

A. I guess about 12:00 o'clock, somewhere along there, I don't remember.

Q. Did you spend that night, Monday night, at home?

A. Yes, sir.

Mr. Simpson:

We object to leading him continuously.

The Court:

Sustained.

Q. Where did you go Tuesday, if you went anywhere?

A. I got up in the morning and came back down to Rex's Grill.

Q. Did you go around any entrances to the Boyles Yard on Tuesday?

A. No, I don't believe I did. I was right at Rex's Grill, hanging around there.

Q. Did you see any work going on in the Yard?

A. No.

Q. What did you do Tuesday night?

A. I stayed around there, went home first and ate dinner, then come back down that afternoon and stayed around. I don't remember what time it was that night, and then went home.

Q. When did you go to work the first time after this work stoppage was over?

A. Thursday morning.

Q. When did you learn that the work stoppage was over?

A. Wednesday afternoon late, about dark.

Q. How did you learn?

A. Well, I say I learned it. There was a fellow named Hermey Roy came down and said "Everybody's going to work, it's all over." And in a little while I saw a bunch of them ganging up down at that bridge down there where they go across to the roundhouse. You could hear them all saying "Well, we're going in there in a few minutes." They were fixing to go in there then. Mr. Mulvaney and I think this fellow Camp came down there, Special Agent, says "You all go on in."

In the meantime there were some fellows came out of the Yard with guns on them, two of them I saw with guns.

Q. Did you know who those fellows were?

A. I don't know, I never seen them. I heard them say they were thugs, that's what the men called them.

Q. Were they L&N employees?

A. That's what the men said, they was thugs, I don't know. Then there were two other men in the inside of the Yard where a boxcar was sitting there. We started, some of us started to go in there, but they said "Don't go in there yet", they said "You'll get shot." There was two of them that finally came out and left, and they had guns.

Q. Had you ever seen those two men before?

A. No, I never seen them, at least I don't believe I had. It was dark out there.

Q. Did you go in with the group at that time?

A. Yes, one of the first ones to get in.

Q. When did you go to work?

A. They called me out Thursday morning to go to work.

Q. Did Mr. Camp say anything to you about who those men that were in the Yard were with guns?

A. I never heard him say. He didn't say anything to me, and I didn't say anything to him.

Q. You didn't hear him say anything about that they were detectives, hired by Mr. Bodeker?

A. No, sir, I didn't hear him say who they were, nothing more than just what those men said out there, they said they were thugs.

Q. All right, now, Mr. Letchman, at the gathering at Mr. Parker's house did you tell anybody to threaten any L&N employee that wanted to go to work?

A. No, sir, I did not.

Q. Or to use force on any employee that wanted to go to work?

A. No, sir.

Q. Did anybody tell you to threaten any employee of the L&N Railroad?

A. No, did not.

Q. Or to use any force?

A. They did not.

Q. During these three days, approximately three days that this work stoppage lasted, did you threaten any L&N employee?

A. I did not.

Q. Did you forcibly prevent any L&N employee from going to work?

A. I did not.

Q. Did you tell any L&N employee not to go to work?

A. I did not.

Q. Did you instruct any other person to prevent any L&N employee from going to work?

A. I did not.

Mr. Taylor:

That's all, Mr. Letchman. Answer these gentlemen's questions.

Cross Examination.

By Mr. Simpson:

Q. Mr. Letchman, who was it that asked you to go to the meeting on that Sunday afternoon?

A. Mr. McCutcheon invited me, and asked me. I asked him what kind of meeting it was, and he told me, and I said "All right, I'll go."

Q. Up to that time you hadn't known anything about the meeting at Mr. Parker's house?

A. Yes, sir, I heard something I think Sunday morning about it. I believe it was Sunday morning.

Q. Mr. McCutcheon invited you to go and you went?

A. Yes, sir.

Q. By yourself?

A. Yes, sir.

Q. You got over there and I believe you told us then that Mr. Otts got up, Mr. Otts was your Local Chairman, the Local Chairman of the main line Division?

A. Yes, sir.

Q. Mr. Otts got up and said what?

A. Well, he said that he had taken it up, had already taken it up, I believe it was he said with Mr. Quiggins, and Mr. Quiggins told him it was above him, or above his head, or something to that effect.

Q. Don't you remember that Mr. Otts said that he had taken it up with Mr. Quiggins, and he was not going to take it up with another damned L&N official?

A. No, I never heard him say that.

Q. You heard the witnesses here on the stand say that he said that?

A. Yes, I understand, I heard the witnesses say that, but you asked me whether I heard him say that.

Q. You were right there in the meeting?

A. Yes, sir.

Q. Where this other gentleman was?

A. Yes, sir.

Q. You don't say he didn't say it, you just say you didn't hear him say it?

A. I didn't say that he didn't say it, but I didn't hear him say it.

Q. All right. Now then, you told us also that Mr. Reese Thomas made a statement at the meeting?

A. Yes, sir.

Q. What did he say?

A. He got up and said something to the effect that "We are here to discuss ways to get these hostler helpers jobs back that they have abolished", or was abolishing, or something to that effect.

Q. Did Mr. Thomas tell you anything about having those picket signs in his car outside?

A. No, sir, he never told me anything about any picket signs.

Q. Did you see them?

A. No, sir, I didn't see them.

Q. Mr. Thomas didn't say a word to you about it?

A. No, sir.

Q. Now, you stayed there about how long at the meeting?

A. You mean how long did I stay?

Q. Yes, sir.

A. I guess about, after it got started there, about 10 or 12 minutes, something like that, it might have been 15.

Q. During that time the meeting had reached a conclusion about what was going to be done though?

A. Yes, sir, that's what I understood.

Q. That was to call a strike that night at 9:00 o'clock, wasn't it?

A. I don't know, they never said anything about a strike. There was nothing mentioned, or walkout, or anything else that I heard of.

Q. But you were in agreement about what you were going to do, weren't you, when you left there?

A. They was in agreement about what they were going to do, yes, sir, about taking it up with the proper channels.

Q. Didn't you tell us that Mr. Otts said he had already taken it up with Mr. Quiggins?

A. That's absolutely right.

Q. You didn't hear him say he wasn't going to take it up with another damned L&N official?

A. No, sir, I didn't hear him say that.

Q. You didn't hear that?

A. No, sir.

Q. Didn't you say when you left there that you understood that they had reached an agreement, that you were going to just take it up through regular channels?

A. Take it up, and turn it over to Mr. Paschal.

Q. Don't you know that you heard Mr. Kennedy advocate that?

A. No, sir, I didn't hear Mr. Kennedy say anything.

Q. You didn't hear Mr. Kennedy get up and say he talked to Jake Paschal that afternoon?

A. No, sir, I never heard him say that, if he said it, he said it after I left there.

Q. And that Paschal had told him to come to the meeting and tell these men under no circumstances to strike?

A. I didn't hear him say that.

Q. That the Union couldn't support them?

A. I didn't hear him say that.

Q. You didn't?

A. No, sir.

Q. That it would be an illegal strike?

A. No, sir.

Q. You didn't?

A. No, I didn't hear him say that.

Q. Didn't you hear them tell Mr. Kennedy and Mr. Logan and Mr. Vann if they couldn't picket and support the strike that they ought to leave the meeting?

A. No, sir, I didn't hear anybody say that.

Q. Who was the first man that left that meeting?

A. I believe I was.

Q. You mean you left there before Kennedy, Logan and Vann?

A. I'm pretty sure I did.

Q. And before Sutterlin?

A. Yes, sir, I believe I did.

Q. You believe you did?

A. Yes, sir, I could almost swear to that.

Q. Now at the time you left, the thing had been decided, whatever it was, they had decided to do, it was already decided before you left, hadn't they?

A. So far as I was concerned, they had.

Q. I will ask you if you were asked these questions, and did you make these answers in your deposition taken on May 3, 1956. Page 50, Mr. Taylor, towards the bottom of the page:

"Q. How many men were still in the Parkger garage when you left?

"A. I don't remember. There was a pretty good crowd in there. I might not have been the first one to leave, I don't remember.

"Q. What is your judgment about the total number of men that were there when you went there?

"A. When I first went in?

"Q. When the meeting started?

"A. I would say 20 men or something like that.

"Q. Give us your best judgment about the number that was still there when you left.

"A. I think the biggest part of them were there.

"Q. Practically all of them, weren't they?

"A. Yes, sir.

"Q. Were they in general agreement or were they in disagreement?

"A. So far as I could see they were in agreement, so far as I could detect, they were all in agreement.

"Q. You didn't hear any disagreement by anybody?

"A. No, sir.

"Q. While you were there at that time?

"A. No, sir.

"Q. Were they in agreement about what was to be done about the hostler helpers jobs, as well as you remember? They were in agreement, weren't they?

"A. Yes, sir."

A. That's right.

Q. Were you asked those questions and did you make those answers?

A. Yes, sir, I believe I did.

Q. After leaving there you showed up at Rex's Barbecue stand that night at what time did you tell us?

A. I reckon about a quarter to 10:00 or something like that, I don't remember.

Q. About 9:30 or 9:45?

A. It was later than 9:30. I would say close to 10:00 o'clock.

Q. When you got down there that night?

A. Yes, sir.

Q. And you stayed there how long?

A. Until about 2:00 o'clock, somewhere along there.

Q. About 2:00 o'clock?

A. Yes, sir.

Q. And you went home then you say and went to bed?

A. That's right.

Q. And got up next morning and came back out there at what time?

A. I guess about 9:30, somewhere along there, I don't remember right now, maybe 10:00 o'clock.

Q. About 9:30 or 10:00 o'clock?

A. Down at Rex's Grill there.

Q. You stayed around Rex's for a little while?

A. A pretty good little while, I don't remember exactly.

Q. Then you got in your car and drove up to the Master Mechanic's gate?

A. Yes, sir, I drove up that way and turned in then, and went in there.

Q. The big crowd was at Rex's?

A. Yes, sir, that's where the biggest part of the crowd was all the time.

Q. The Master Mechanic's gate is about how far from Rex's?

A. I would say about three or four blocks, city blocks.

Q. It is about how far off, away from the Pinson Pike?

A. Oh, I guess about a block.

Q. It is a pretty long block, isn't it?

A. Well, it may be, it may be a block and a half, I don't know.

Q. There are two roads or streets—

A. Yes, sir.

Q. —that converge out there at that gate?

A. Yes, sir.

Q. Both of them come off of Pinson Pike?

A. That's right.

Q. And you were just coasting around and decided you would drive over there?

A. Well, I started up the road and I saw a car or two down there, and I said I believe I would go down to see what the news is.

Q. Had anybody asked you to go over there and relieve somebody on picket duty at that time?

A. No, sir, nobody hadn't asked me.

Q. When you got over there who did you find there?

A. Well, that fellow Hawkins was sitting in his car, and there were two or three other cars there, or one or two, I don't remember now, and I don't know who was in that car.

Q. Who was Mr. Hawkins?

A. He is a fireman.

Q. He is a fireman?

A. Yes, sir.

Q. He was sitting there in his car at that gate?

A. Yes, sir.

Q. And there was another man in the car with him?

A. No, there wasn't any other man in the car with him.

Q. Where was the other man?

A. I don't know, I saw another man or two in another car sitting there.

Q. Mr. Hawkins was just sitting there, kind of looking at the gate, wasn't he?

A. No, he wasn't looking at the gate, he was facing me.

Q. How far was he from the gate?

A. I guess about 30 feet, or maybe 40.

Q. About 30 feet?

A. Maybe 40.

Q. There couldn't anybody have gone in that gate without his seeing them, could they?

A. I'm not no judge of that.

Q. You just wouldn't say?

A. No.

Q. But he was about 30 feet away from them?

A. Maybe 40, I don't know.

Q. Maybe 40 feet?

A. 35, something like that.

Q. He wasn't talking to anybody?

A. Well, there was nobody in the car with him.

Q. Nobody in the car with him?

A. That's right.

Q. He wasn't talking to anybody?

A. That's right.

Q. Wasn't doing anything?

A. No, just sitting there in his car.

Q. Just sitting there at that gate?

A. Yes, sir, I think he had his radio on, I believe that's right.

Q. He might have had his radio on?

A. Yes, sir.

Q. Was he whittling?

A. No, sir.

Q. He was one that wasn't whittling. Now, where was this other man that you say was around there?

A. I don't remember, but there was another car parked over on the other side, maybe two of them, just kind of in that direction.

Q. Who was in those cars?

A. I don't know who they were.

Q. Don't you remember Jody Johnson was there?

A. No, I didn't see Jody Johnson there.

Q. Did you see Mr. Davis there?

A. I don't—which Davis are you talking about?

Q. T. E. Davis.

A. No, I don't believe I did.

Q. You didn't see him. You know Johnson?

A. Which Johnson, Jody Johnson?

Q. The younger Jody?

A. Yes, sir, both of them.

Q. And you know Davis?

A. I may know him if I see him, but I don't know him by that name.

Q. Well, the Davis that you know, what is he?

A. Well, I just couldn't place him right off the reel. I know lots of Davises here in town.

Q. I know, but I am talking about the L&N employees.

A. If you show him to me, maybe I will know who he is, but I can't recall him right off.

Q. You can't do that?

A. No, sir.

Q. Now, you saw that car sitting over there with somebody in it on the other side of the gate?

A. Yes, sir—not on the other side of the gate, now let's get that straight. That other slanting road that comes over here, there was one or two cars sitting

over there. This road comes in straight from the east where Hawkins was, and the other car comes in and faces kind of northwest coming in. Now over on the other side, in that road over there, there was one car or possibly two, I don't remember.

Q. Hawkins was sitting in one road where he could watch the gate, and these other cars were where?

A. Sitting back just about straight across north on a direct shot north.

Q. About how far away from the gate, on the other road?

A. Who is that?

Q. The other car.

A. It might have been 40 feet, I don't remember. It may have been a little further. It was just about, one of these cars was just about on a straight shot with the car Hawkins was in.

Q. Was he just sitting there looking at the gate, watching it?

A. I don't know. I didn't see him looking at the gate.

Q. You didn't think that Mr. Hawkins and this other car were on picket duty at that gate?

A. No, sir, I wouldn't consider it a picket.

Q. What?

A. I wouldn't consider it a picket.

Q. You wouldn't just even consider it?

A. No, sir.

Q. You didn't see anybody going in and out of that gate, did you?

A. No, sir.

Q. Now then, you drove up there, nobody had asked you to drive up there?

A. No, sir, going on my own free will.

Q. How long was that before Mr. Mitchell got there?

A. I don't know, I guess maybe 20 minutes, 10 minutes, it could have been, I don't know.

Q. 10 or 20 minutes?

A. Somewhere like that.

Q. You just drove up there?

A. Yes, sir.

Q. Did you go to talking to anybody?

A. I got out of the car, I parked my car and got in the car with Hawkins there, first I stood there and talked to him a few minutes.

Q. Then got in his car?

A. Yes, sir, he has got a new car, I think he said he had a new car.

Q. We are not interested in that, please, sir.

A. All right.

Q. How long did you stay in his car before Mr. Mitchell got there?

A. I don't remember, it wasn't such a great while.

Q. Did anybody come there before Mr. Mitchell got there?

A. Yes, sir, Reese Thomas came down by there.

Q. Who came with Reese Thomas?

A. I don't know. There was somebody in the car with him.

Q. Well, was it Bruce Barnett?

A. Well, I don't remember seeing him, but since then he said he was there, so he probably was.

Q. You know Bruce Barnett?

A. Oh, yes, sir.

Q. And Reese Thomas too?

A. Yes, sir.

Q. They are both firemen, aren't they?

A. Yes, sir.

Q. Which road did they come in?

A. Come in from the east.

Q. The one that turns off of Pinson Pike the furthest away from Birmingham?

A. No, I believe they came in from the one that comes by the Masonic Hall—not by the Masonic Hall either, but from the other one on up there.

Q. The one that is closest to Rex's Barbecue?

A. No, I don't believe they did. I don't—no, because I was sitting on the road that comes out from up on Vanderbilt. Now the other road that comes in from that direction comes in from around towards the Masonic Hall there. They came in on the same road that I was sitting on.

Q. As you go away from Rex's Barbecue going towards Tarrant City?

A. Yes, sir.

Q. You come to two roads that turn off and go to the Master Mechanic's gate?

A. Yes, sir.

Q. Did Thomas come in from the first one of those roads you come to, or the second one?

A. He came in from the south.

Q. Well, which one, the first or second?

A. Repeat that question. Coming from where now?

Q. As you go up to Rex's from towards Tarrant City.

A. Yes, sir.

Q. You come to two roads that turn off to the Master Mechanic's gate?

A. No, not going from Rex's Barbecue from Tarrant City. That's the other side of there.

Q. Can you go from Rex's to Tarrant City on the Pinson Pike?

A. Yes, sir.

Q. As you go along there now you turn off to the left and go to the Master Mechanic's gate?

A. No, I don't think so.

Q. Which way would you turn off?

A. Well, you come back towards Birmingham from Rex's Barbecue.

Q. The Master Mechanic's gate is back towards Birmingham from the Rex's?

A. Yes, sir.

Q. As you come back towards Birmingham from Rex's to the Master Mechanic's gate, you come to two roads that turn off to your right to the gate?

A. That's right.

Q. All right. Now then, did Reese Thomas come in on the first or the second one of those roads?

A. Second one.

Q. The second one of those roads?

A. Yes, sir.

Q. In other words, the one closest to Birmingham?

A. That's right.

Q. All right. Now, Thomas and Barnett, if Barnett was with him—

A. Yes, sir.

Q. And you say you think he was?

A. Yes, sir.

Q. They came rolling up there, and how long had they been there before Mr. Mitchell got there?

A. 5 or 10 minutes.

Q. 5 or 10 minutes?

A. Yes, sir.

Q. They had been there about 5 or 10 minutes, and you had been there about 10 or 20 minutes?

A. I had been there maybe 10 or 15 minutes, 20 minutes, I don't remember now.

Q. They came rolling up?

A. Yes, sir.

Q. Did any of you fellows leave at that time?

A. Leave when they came up there?

Q. Yes, sir.

A. I don't remember. I didn't leave.

Q. Did you say anything about leaving?

A. No, sir.

Q. Did they say anything about you could leave now? Or did any of you relieve Mr. Hawkins?

A. Say I could leave?

Q. Or Mr. Hawkins?

A. I could leave on my own free will and accord. They didn't tell me anything about leaving.

Q. I didn't ask you if you could leave on your own free will and accord. I asked you if anybody said anything to you about any of you that were already there leaving.

A. No, sir.

Q. Now then, when Mr. Mitchell came up who was in the car with him?

A. Well, there was—from what I see now it was Mr. Woelde that was in the car.

Q. I am asking you what you know, please, sir.

A. Well, there was a man with him, and he has been pointed out as Mr. Woelde since then, so he was with him. But I didn't know for sure whether it was Mr. Woelde at that time or not.

Q. Who was driving that car?

A. I believe Mr. Woelde was. Now, I won't be positive, but I believe he was.

Q. They were both officials of the L&N Railroad, weren't they?

A. That's right.

Q. One was Trainmaster I believe, and the other one was Assistant Trainmaster?

A. I think that's the title.

Q. Now did they drive up to this gate and just go on in?

A. No, they got up there and stopped.

Q. Was there any car ahead of them?

A. Reese Thomas' car was right there by it.

Q. Reese Thomas had driven his car up there and parked it so that it blocked that opening down there?

A. Well, so far as a car going in there, it would have blocked it, but anybody could have walked in.

Q. Oh, they could have walked in?

A. Yes, sir.

Q. Ordinarily you drive cars in there?

A. Yes, sir.

Q. Drive around a circle, don't you?

A. That's right.

Q. But you couldn't drive in a car and get by Reese Thomas' car, could you?

A. No, sir, not where it was sitting.

Q. Now then, they got out of their car, or one of them got out of the car, didn't he, that is Mitchell or Woelde?

A. Yes, sir, I believe it was Mitchell that got out, I am pretty sure it was.

Q. Who did he talk to when he got out?

A. I saw him talking to Reese.

Q. He was talking to Reese Thomas?

A. I saw him talking to Reese.

Q. Do you tell us you did or did not hear what he said?

A. Nothing more than to the effect that I heard the words hollered out or spoke out, something about going in there and checking them cars.

Q. I will ask you if you didn't hear Reese Thomas tell him he couldn't go in there?

A. No, sir, I didn't hear that.

Q. Didn't you get out of Hawkins' car and come over there?

A. No, sir.

Q. And join in the conversation and tell Reese Thomas he ought to let him go in and see about livestock?

A. No, sir, I didn't.

Q. Didn't you then argue with Reese Thomas a while, and Reese finally said "I'll let him go in and stay 30 minutes"?

A. No, sir, I didn't argue with him or say anything to him.

Q. Didn't you hear Reese Thomas tell Mr. Mitchell right there "You can go in and stay 30 minutes, and if you are not out by that time we are coming in and get you"?

A. No, sir, I didn't hear him say that.

Q. And didn't you then see Reese Thomas pull his car out so it wouldn't block the gate?

A. I saw him move his car.

Q. And Woelde drove on in?

A. I saw him move his car.

Q. And you saw Mr. Woelde drive on in?

A. Yes, sir, they went in through the gate, that's right.

Mr. Simpson:

That's all. I don't believe I care to ask him anything else, Your Honor.

The Court:

All right, come down.

(Witness excused.)

The Court:

Gentlemen, we are going to recess for lunch now. Be back at 1:30.

(Whereupon, at 12:20 p. m. a recess was taken until 1:30 p. m., of the same day.)

Afternoon Session.

1:30 P. M.

The Court:
All right, call your next witness.

Mr. Pettus:
Mr. Anderson.

HOWARD EUGENE ANDERSON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:
Q. Will you state your name?
A. Howard Eugene Anderson.
Q. Do you work for the L&N?
A. Yes, sir.
Q. What is your job?
A. Locomotive fireman, engineer and hostler.
Q. Do you live here in Birmingham?
A. Yes, sir.
Q. Are you a member of a labor organization?
A. Brotherhood of Locomotive Firemen and Enginemen.
Q. Did you work on the day of this work stoppage that occurred on October 23, 1955?
A. Yes, sir, yes, sir.

Q. What time did you get off work?
A. Let's see, around 4:15.
Q. About 4:15?
A. Yes, sir.
Q. Did anyone have any conversation with you about the Parker house meeting before it occurred?
A. No, in general conversation I overheard it, that they were to have a meeting there.
Q. You overheard the conversation?
A. Yes, sir.
Q. Did you attend the meeting at the Parker house?
A. I did.
Q. Did you go to the meeting with some one or go by yourself?
A. Well, I rode in my automobile, and I followed Mr. Otts up there.
Q. What time did you arrive at the meeting?
A. Around 4:30.
Q. Was the meeting in the basement?
A. Yes, sir.
Q. Were the men in the basement when you arrived, or were they outside?
A. I think there were some outside probably.
Q. Outside?
A. Some inside.
Q. How long did the meeting last?
A. I venture to say about 30 minutes.
Q. About 30 minutes?
A. Yes.
Q. Did you make any statements there at the meeting that you recall?
A. Well, I don't know whether I made any statements. I talked to several of the men around there. They were in groups you know, shifting about.
Q. You would go from one group to another?

A. Yes, sir.

Q. Or stay in the same group?

A. In a sense, yes, sir.

Q. Was there anyone that was talking to the meeting as a whole there that you recall?

A. I beg your pardon?

Q. Was there anyone talking to all of them assembled there in the basement, or were they just talking?

A. They were just talking in a group.

Q. What was the subject of discussion?

A. The general talk was mostly about what they were going to do about those hostler helpers jobs, was there any way to restore them.

Q. Do you remember that any of the men said anything about what they were going to do?

A. No, sir.

Q. You just don't remember anything?

A. No, sir.

Q. Was Mr. Kennedy there?

A. I believe he was.

Q. T. A. Kennedy, do you recall any particular statement he made?

A. No, sir.

Q. Did you stay until the end of the meeting?

A. I think I did, yes, sir.

Q. There has been some testimony here about some vote or show of hands, or anything like that. Did you see anything like that yourself?

A. No, sir.

Q. Were you in the basement that whole time?

A. Yes, sir.

Q. Did you leave that meeting with anyone?

A. No, sir.

Q. When you left the meeting, where did you go?

A. I went home.
Q. You went home?
A. Yes, sir.
Q. Did you stay at home all that evening?
A. Well, up until about 8:30.
Q. About 8:30?
A. Yes, sir.
Q. Where did you go then?
A. I went to my daughter's house.
Q. You went to your daughter's house?
A. Yes, sir.
Q. Did you visit with her a while?
A. About an hour, something like that.
Q. When you left your daughter's house did you go anywhere else?
A. I went down to Rex's Barbecue.
Q. Did you see anyone down there that you recall?
A. Well, I saw a bunch of railroad men.
Q. A bunch of railroad men?
A. About all I—
Q. Were they all crafts?
A. Sir.
Q. Were they all crafts?

Mr. Gibson:
We object to leading him.

A. Yes, sir.

The Court:
Sustained.

Q. State whether or not there was one or more crafts of railroad men that you saw there.
A. Oh, yes, there was one or more crafts.

Q. One or more?
A. Yes, sir.
Q. How long did you stay at Rex's?
A. Oh, about, I don't know, I guess about—it might have been a couple of hours.
Q. A couple of hours?
A. Yes, sir.
Q. Were you in the cafe part or were you on the outside or just where were you in that vicinity?
A. Well, I went inside and stayed a few minutes. I came back out and I believe I, I remember—yes, I got with Bruce Barnett, and he and I went out and sat in my car. We had a talk.
Q. How long were you out there, do you recall?
A. It was about an hour or better.
Q. There were just the two of you in the car, is that right?
A. Yes, sir.
Q. Had you come down to Rex's in your own automobile?
A. Yes, sir.
Q. When you left, did you leave in your own automobile?
A. Yes, sir.
Q. Where did you go?
A. I went home.
Q. You went home?
A. Yes, sir.
Q. Did you spend the rest of the night at home?
A. Yes, sir.
Q. On Monday, tell us what you did.
A. Well, I was to go back to work, I mean it was my time to go back to work, it was at 7:55 at that time. My time was to go back to work at that period, it was to be at 7:55 a. m. I went down to the Rex's Barbecue down there.

Q. At that time?

A. Yes, sir.

Q. How long did you stay there?

A. Oh, offhand, I don't know.

Q. Did you stay all day?

A. No, sir.

Q. Well, did you go anywhere else that day that you recall?

A. Not that I recall.

Q. How about Tuesday, what happened on Tuesday?

A. Well, I went back out there that morning, out to Rex's, at the same time.

Q. Out to Rex's?

A. Yes, sir, just a little before my work time.

Q. Did you stay around there all of the day?

A. No, sir.

Q. Where else did you go?

A. Well, I went home and stayed around there a while. And that night I drove down to, downtown.

Q. You drove downtown that night?

A. Yes, sir.

Q. Do you know a man by the name of Ed Weldon?

A. Yes, sir.

Q. Did you go to his house at any time during the work stoppage?

A. Yes, sir.

Q. Do you recall what day that was?

A. No, I can't recall what day it was.

Q. You don't know whether it was Monday, Tuesday or Wednesday?

A. No, sir, I don't.

Q. Is that right?

A. No, sir.

Q. Did you go to his house?

A. Yes, sir.

Q. What time of the day or night was it, if you recall?

A. Oh, it was, I venture to say it was about, it was up in the early afternoon.

Q. Early afternoon?

A. Yes, sir.

Q. Do you recall who was there when you went to his house?

A. Well,—

Q. Was he there?

A. Yes, sir, he was there.

Q. He was there?

A. Yes, sir.

Q. Do you recall any of the others?

A. Well, Bruce Barnett was up there. I had driven up there to his house to get him to show me where he lived.

Q. Just tell us what occurred, if anything, at Weldon's house.

A. Well, they were having a meeting down there at, down here in town at the hotel suite or some place, and there was the International President down here I think, some of the Company officials, and they were trying to reach an agreement to go back to work. And he was to receive, some one up there was to call Mr. Weldon and let them know if they had reached an agreement.

Q. While you were there, did anybody report any such call?

A. No, sir.

Q. How long were you at Mr. Weldon's place?

A. Well, 20 or 30 minutes.

Q. Then did you leave?

A. Yes, sir.

Q. Now, on Wednesday tell us what you did?

A. Well, I came back down to Rex's again just before I was supposed to go to work and stayed around there a while.

Q. Did you stay at Rex's all day?

A. No, sir.

Q. If you went anywhere else and recall, tell us where it was.

A. Well, I—I started back down to Rex's that night, I venture to say about maybe 8:30 or 9:00 o'clock, I don't know just exactly what time it was.

Q. Did you go down to Rex's Wednesday night?

A. Well, I started down there and I saw a group of men up there at the powerhouse gate, at the 39th Street gate, a big crowd of people around there, a crowd of automobiles, a lot of loud talk going on, and I stopped there to see what it was all about.

And there was a bunch of men in the inside there armed, and they wanted, the fellows told them to get them out of there, they would go to work.

Q. The men that were armed were on the Company property?

A. Yes, sir.

Q. Were they gotten out of there?

A. Well, the police came up there in a couple of police cars, and then they went in there and had a conference with them. Mr. Camp drove up, that is the Sergeant of Police for the Company, and I asked Mr. Camp, I said "Mr. Camp, are those your men?" He said "No, my men has had orders to stay out of there. Those are Bodeker's men."

Q. They were what?

A. Those are Bodeker's men.

Q. Bodeker?

A. Yes, sir.

Q. Did the Bodeker men leave, were they taken away by the police then?

A. Well, they went in, they were not necessarily taken away by the police. The police led them, or they got in their automobiles and came out and the police went ahead of them.

Q. They came ahead of them?

A. Yes, sir.

Q. Were the regular L&N employees, they were waiting on the outside?

A. Oh, yes, yes, sir.

Q. After these Bodeker men left, did the employees then go back to work?

A. Yes, sir.

Q. And how long have you been working for the Railroad?

A. I've been working for the Railroad ever since 1937, but I was in another department. This department I'm in, I have been there since June 22, 1942.

Q. Have you been paid anything for the days during the work stoppage?

A. No, sir.

Q. What is your average pay per day?

A. Well, I guess you would say it would average, it averages, it would be around $16.00.

Q. $16.00?

A. Yes, sir.

Q. All right.

A. Some days I make above sixteen, some a little below.

Mr. Pettus:

All right, that's all.

Cross Examination.

By Mr. Smith:

Q. Mr. Anderson, you were one of the men in charge of the pickets during the strike, weren't you?

A. No, sir.

Q. You say that's not true?

A. That's right.

Q. Now, Mr. Anderson, you went to the Parker meeting, you have told Mr. Pettus. We have gone into that pretty thoroughly, and we don't want to go all over that again, but let me ask you this. You have been in the Courtroom during the trial?

A. Absolutely, yes, sir.

Q. The entire trial, haven't you?

A. That's right, yes, sir.

Q. You have heard various witnesses name the people who were at that meeting?

A. That's right.

Q. Do you recall that those people were there?

A. Yes, sir.

Q. Those that were named?

A. Yes, sir.

Q. All right. You don't recall any other people that were there?

A. No, sir.

Q. At that meeting they discussed what they could do to get those hostler helpers jobs back, didn't they?

A. Yes, sir.

Q. That is what you told Mr. Pettus?

A. Yes, sir.

Q. I will ask you, Mr. Anderson, if you didn't hear it said that everybody would get back down to the Rex's Cafe that night around 8:30?

A. No, sir.

Q. And would go through the Yard around 9:00 o'clock and close down the Yard?

A. I did not.

Q. But you did show up at the Rex's Cafe about 9:30, didn't you?

A. That's right.

Q. And when you got there the Yard was shut-down, wasn't it?

A. That's right.

Q. Now, you went on home, you told us, on Sunday night?

A. Yes, sir.

Q. You came back down there on Monday morning, didn't you?

A. That's right.

Q. And you came back down there on Tuesday morning too, didn't you?

A. That's right.

Q. You hung around there, down there some time both mornings?

A. Yes, sir, that's right.

Q. And you saw a lot of men down there?

A. That's right.

Q. They were railroad men, were they not?

A. That's right.

Q. And you knew a number of them, didn't you?

A. Yes, sir.

Q. You recognized them?

A. Yes, sir.

Q. They were men you worked with, weren't they?

A. Yes, sir, that's right.

Q. Some five weeks after this occurrence, you couldn't tell us a person you saw down there, could you?

A. That's right.

Q. Can you tell us any of them now?

A. No.

Q. You still can't tell us anybody you saw on those two occasions at all?

A. I can't single out anybody.

Q. Well, you mean that your mind just doesn't pick out of that number of people that you saw and that you knew any single person that you saw down there on Tuesday or Wednesday?

A. If I had an occasion to associate them with that particular time, I probably could.

Q. Yes, sir. But you are telling us then that you didn't have occasion on either time that you were down there, Tuesday and Wednesday, to single out a single person in your mind, so that you can tell us his name?

A. That's right.

Q. Is that right?

A. That's right.

Q. Now, you went down to Morris Avenue—you told Mr. Pettus you came to town. Where you went was down by the L&N Passenger Station, wasn't it?

A. Well, across the street from it.

Q. Yes, sir, down on Morris Avenue, wasn't it?

A. That's right.

Q. You were right there on that street where opposite you was the L&N Passenger Station and the general offices and so forth?

A. Possibly somewhere near it.

Q. Now, what business did you have down there Tuesday night?

A. Well, I didn't have any particular business.

Q. You didn't have any particular business?

A. No, sir.

Q. You were not down there to check on the pickets?
A. No, sir.
Q. You didn't see anybody picketing down there?
A. No, sir.
Q. Now, let's get that cleared up. By "pickets", what do you understand by the term "a picket"?
A. A person that is authorized to carry a sign.
Q. All right, sir. Well, let me ask you if you saw any men that you recognized as railroad men standing around Morris Avenue, around the entrance to the L&N property there on Tuesday night?
A. Not that I recall.
Q. You didn't see Mr. Grissom down there?
A. No, sir.
Q. You didn't see him waiting for Slim down there?
A. No, sir.
Q. You heard him testify he was down there?
A. That's right.
Q. You didn't see that?
A. I didn't see that.
Q. You stayed in your car?
A. Sir?
Q. You stayed in your car?
A. Part of the time.
Q. You got out some of the time?
A. Yes, sir.
Q. Now, you were there some 2 hours, you say?
A. More or less.
Q. More or less?
A. Yes, sir.
Q. All right. Now, you did not go down there again on Wednesday you told us?
A. No, sir.

Q. Now, Mr. Anderson, during this strike, didn't you call up a number of people and ask them to go on picket duty?

A. I did not.

Q. You tell the jury that you did not do that?

A. I will tell the jury I did not.

Q. You tell the jury at no time during this stoppage, from the 23rd to the 26th of October, 1955, you called up men out there that worked for the Railroad and asked them to go on picket duty?

A. I did not call them.

Q. You heard some of them testify?

A. Sure, I heard them.

Q. Sir?

A. Yes, sir.

Q. You have heard that, haven't you?

A. Absolutely.

Q. Now, did you call Mr. Chapman?

A. No, sir.

Q. You didn't talk to Mr. Chapman about picketing?

A. No, sir.

Q. During the strike?

A. No, sir.

Q. What about Mr. Grissom?

A. No, sir.

Q. You didn't talk to him?

A. No, sir.

Q. Now, let's see if I can—are you positive you didn't talk to anybody on the telephone about picketing?

A. I am positive.

Q. All right, sir. Well, did you call up a lot of people and talk to them about the Weldon meeting?

A. No, sir.

Q. You did not?

A. I did not.

Q. As a matter of fact, do you recall talking to anybody during this period of time by telephone at all?

A. No, sir.

Q. All right. I will ask you do you recall when your deposition was taken back in November, of last year?

A. Yes, sir.

Q. Your testimony was taken and you were under oath and your lawyer was present when we took your pretrial deposition, you remember that, don't you?

A. That's right.

Mr. Smith:

This is page 44.

Q. I will ask you if these questions were not asked you and if the answers indicated were not given by you:

"Q. Did you call anyone at all during the three day suspension of operation and talk to them with reference to picketing, or standing around, or being posted at any place of business of the L&N Railroad?

"A. I don't recall.

"Q. Sir?

"A. I don't recall.

"Q. Well, do you testify you did not do that?

"A. I said I don't recall.

"Q. You mean you just don't know, and can't tell us whether or not you did that?

"A. That's right."

Now, Mr. Anderson, were those questions asked you and those answers given by you at the time?

A. I suppose they were.

Q. You know that they were, don't you?

A. Well, yes, sir.

Q. Now, Mr. Anderson, you were questioned here, and you mean you just don't know, you can't tell us whether you did or not, is that right? You were not positive then, were you?

A. No, I was not too sure.

Q. No, sir. Has anything occurred since November, of 1955, to make your recollection better today than it was then?

A. No. But I know that these men that got up here and testified that I did call them, I know that I didn't.

Q. Well, but you don't know of any reason why your recollection would be better today than it was in November, of 1955, do you?

A. No, sir.

Q. Sir?

A. I don't guess I do.

Q. No, sir, and you were not sure then?

A. No, sir.

Q. You heard Mr. Rich testify here, didn't you?

A. That's right.

Q. You know Mr. Irvin Rich, don't you?

A. Too well.

Q. Too well?

A. Yes, sir.

Q. You know him well enough to call him up on the telephone during the strike, didn't you?

A. No.

Q. You didn't?

A. No.

Q. You had known him some time prior to that, hadn't you?

A. All I know about him, he is just a Section 8.

Q. A what?

A. Section 8.

Q. What is "Section 8"?

A. He is drawing a pension from the Government for mental disorder.

Q. Oh, he is? Do you know that?

A. (No response.)

Q Mr. Anderson, don't you know it as a fact that Mr. Rich is drawing disability from the Federal Government because of a war wound?

A. A war wound?

Q. Yes.

A. I've heard he shot his toe off to get out of it.

Q. Don't you know that he was wounded in the war?

A. I said I've heard he shot off his toe to get out of it. I don't know whether he was wounded or not.

Q. I see, you don't know?

A. Yes, sir, that's right.

Q. Now you say that you didn't call Mr. Rich on Tuesday some time around 12:30 and ask him to come to the Ed Weldon meeting? You tell us that now?

A. Tell you what?

Q. Do you testify that you did not call Mr. Irvin Rich?

A. I don't recall it.

Q. You don't recall it?

A. No, I don't.

Q. You won't tell us that you didn't?

A. I won't say that I did, either.

Q. You won't say that you did or that you did not?

A. That's right.

Q. Well, then you heard Mr. Rich testify?

A. Yes, I heard him.

Q. And you are not able to deny what he said from that stand, are you?

A. I don't think I called him, I am pretty sure I didn't.

Q. You don't recall it, is that right?

A. (No response.)

Q. Do you have any recollection about calling him or not calling him, Mr. Anderson?

A. I don't think I called that man.

Q. Let me refer you to your deposition again. You had talked to Mr. Rich on the telephone before, hadn't you, before that time?

A. Yes, about a couple of years or more before that.

Mr. Pettus:

What page is that?

Mr. Smith:

Page 26—excuse me, 25, page 25.

Q. I will ask you if these questions were not asked you and you gave these answers when your deposition was taken:

"Q. Do you know a man named Rich?

"A. Yes, sir.

"Q. What is he, a fireman?

"A. Yes, sir.

"Q. Did you talk to him by telephone?

"A. I don't remember.

"Q. During the stoppage?

"A. I don't remember talking to him."

You remember those questions and answers, don't you?

A. That's right.

Q. Now skipping some, going to page 26, let me ask you about this question and answer:

"Q. To refresh your recollection, Mr. Anderson, I will ask you whether or not it is true that on Tuesday, October 25 you telephoned Mr. Rich at his home and talked to him about a meeting which was scheduled for that afternoon at Ed Weldon's house?

"A. I don't recall that I did."

Now, just skipping one or two more, here is page 28:

'Q. Now, since you have had an opportunity to think about it, I will ask you again whether you telephoned E. Rich at about 1:00 p. m. on Tuesday, October 25, and notified him to attend a meeting at Ed Weldon's home?

"A. I don't recall any particular time I talked to him. I have called him a lot of times, but whether or not it was on that day, I don't remember.

"Q. Well, did you mention to Rich at any time—

"A. I don't recall it.

"Q. —the meeting at Weldon's home?

"A. I don't recall it, if I did."

Then one more question page 29: "You don't know whether you would remember having called Rich or not", and your answer "No, sir."

Now, do you remember those questions?

A. Yes, sir.

Q. Do you, sir?

A. Yes, sir.

Q. And you remember the answers?

A. Yes, sir.

Q. So you don't really know whether you talked to Mr. Rich or not, do you?

A. Why I said I don't think I did.

Q. Well, you didn't—you testified here you didn't recall it, and finally you testified that you didn't know. You didn't know at that time, is that right?

A. That's what you said.

Q. I read it correctly, I believe, there, didn't I? You don't recall that there was anything different from that, do you?

A. No, I don't.

Q. All right. Regardless of whether Mr. Rich was wounded in the war or not, you are not able to sit there on the stand and say that what he said wasn't true about that call, are you?

A. I beg your pardon, I didn't catch that question.

Q. I say you can't sit there on that witness stand under oath and tell these gentlemen that what Mr. Rich testified to about that telephone call was untrue, can you?

A. I ain't never known him to tell the truth.

Q. You are unable to tell the jury that what he said about that telephone call was not true, talking about that particular thing that he said? You won't tell the jury that is not true, will you?

A. Well, I won't tell them that it is untrue, either.

Q. You won't tell them it is not true?

A. (No response.)

Q. Now, that was about the Weldon meeting. You did go to the Weldon meeting, didn't you?

A. That's right.

Q. And you had called other people about going, hadn't you?

A. I don't think so.

Q. You don't think so. As a matter of fact, Mr. Anderson, at the Parker meeting on Sunday afternoon, you assisted in making up the list of pickets, didn't you?

A. There was no list of pickets made.

Q. You remember Mr. Fleming sitting there—

A. I know what Fleming said.

Q. —in the chair you are sitting in, and testifying that you did, don't you?

A. What's that?

Q. You remember Mr. Fleming testifying here, don't you?

A. Sure.

Q. Don't you remember him saying that the list was made up?

A. Sure, I remember what he said.

Q. Don't you remember him saying you assisted in it?

A. Yes, I remember him saying that.

Q. You say that is not true?

A. I say that is not true.

Q. All right, but you did go to the Weldon meeting?

A. That's right.

Q. Now, tell us if you will, please, sir, about who you saw there. You saw Mr. Weldon, you have told us?

A. Yes, sir.

Q. That was his home?

A. That's right.

Q. That is Mr. Ed Weldon, isn't it?

A. Yes, sir, that's right.

Q. Not Mr. Jim Weldon?

A. That's right.

Q. And Mr. Barnett, you saw him, you say you went with him?

A. Yes, sir.

Q. Now, didn't you see Mr. J. M. Brown, Jr. there?

A. I believe he was.

Q You testified that you did, didn't you? Haven't you testified that you did see Mr. Brown there?

A. I might have testified that he did.

Q. If you testified that you did see him five weeks after it occurred, that was accurate, wasn't it?

A. Yes. That has been about eight or ten months ago.

Q. Yes, sir. Well, referring to page 31 of your deposition then, the question was asked you:

"Q. Mr. J. M. Brown, Jr., he was there, wasn't he?

"A. Yes.

"Q. He was there?

"A. Yes."

Now, those questions were asked you, weren't they?

A. Sure.

Q. So it is not a question of you believing it, he was there or you wouldn't have told us that he was there, would you?

A. Well, if I said he was there, he was there.

Q. All right. How many men were in that meeting, about a dozen?

A. I guess so.

Q. About a dozen, and you knew all of them, didn't you?

A. Well, I probably did.

Q. Sir?

A. I probably did.

Q. You probably did. You don't recall any of them were strangers, do you?

A. No.

Q. Now, you have named Mr. Weldon, you have named Mr. Barnett, and you named Mr. Brown. Of course, we know that you were there. Will you tell us the name of any other man that was at that meeting at Mr. Ed Weldon's house?

A. Right off hand I can't.

Q. Well, do you think that you can—you say not off hand that you can't?

A. No, sir.

Q. I will ask you if you think you could—did you tell us any other men that were at that meeting some five weeks after that meeting was held when we took your deposition? Did you at that time name anybody els that was at that meeting?

A. I don't know whether I did or not.

Q. Turn to page 33 of your deposition:

"Q. I believe you said there were about a dozen?

"A. Approximately, maybe more or less.

"Q. And of that number you remember only four, only the ones you named?

"A. That's the only ones I can recall."

You do remember when we asked you about that?

A. That's right.

Q. You didn't name anybody else at that time, did you?

A. Well, I stated I couldn't recall them, on that deposition.

Q. I understand that, but you didn't name anybody else at that meeting at that time, did you?

A. No.

Q. And you can't tell us now anybody else that was at that meeting at Mr. Weldon's house?

A. Certainly not.

Q. Cerainly not, but you do remember Mr. Brown was there, Mr. Jim Brown, Jr., don't you?

A. Well, you asked me if he was there whenever you took that deposition.

Q. That's what you have told us, that he was there, and that Mr. Weldon was there and Mr. Barnett was there, isn't that right?

A. That is right.

Q. Now, do you tell the jury that that meeting wasn't a meeting that was called to discuss the picket assignments?

A. It was just to find out if there was any settlement reached by that conference that they had in Birmingham.

Q. You tell us that you didn't tell Mr. Irvin Rich on the telephone that the meeting was called to line up pickets?

A. No.

Q. Do you tell us that when he demurred and said he would not be able to come, you didn't make the statement to him "It's your damned job"?

A. I did not.

Q. You didn't do that?

A. No, sir.

Mr. Smith:

I think that's all.

The Court:

All right, come down.

(Witness excused.)

Mr. Pettuts:
Mr. Otts.

J. B. OTTS, JR., called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?
A. J. B. Ottts, Jr.
Q. Are you one of the Defendants in the case?
A. Yes, sir.
Q. Where do you live?
A. I live in Gardendale now.
Q. What is your occupation?
A. Locomotive engineer.
Q. Are you a member of a labor organization?
A. Yes, sir.
Q. Do you hold an office?
A. Yes, sir.
Q. First, what is that organization?
A. Brotherhood of Locomotive Firemen and Enginemen.
Q. Do you hold an office in that organization?
A. Yes, sir.
Q. What toffice do you hold?
A. Chairman of tthe Local Grievance Committee.
Q. Just state briefly what your job as Local Chairman is, what your duties are?
A. It is the duties of the Local Chairman to handle grievances or disputes that may arise between the firemen or engineers that I might represent and the

Company. And it is also my duty to see that the BofLF&E agreement is lived up to or enforced.

Q. Now, that agreement that you refer to, is it in this sort of a little book there (indicating), that is one of the exhibits to the fifth defense here that we filed, Exhibit A?

A. Yes, sir.

Q. Is that the agreement that was in force in October, 1955?

A. Yes, sir, that's it.

Mr. Pettus:
Now, we offer that agreement in evidence.

Mr. Simpson:
We object to it as immaterial.

Mr. Pettus:
Defendants' next exhibit.

The Court:
Overruled.

Mr. Simpson:
We except.

(Defendants' Exhibit No. 5 was marked for identification.)

The Witness:
Your Honor, that is the agreement between the L&N Railroad and the Firemen and Hostlers.

The Court:
Now was that in effect during October, 1955?

The Witness:
Yes, sir.

The Court:
I overrule the objection.

Mr. Simpson:
We except.

Q. Mr. Otts, this notice with regard to the abolition of the hostler helper jobs, Defendants' Exhibit 1, shows that notices were sent to you. Did you get a copy of that notice?

A. Yes, sir.

Q. Do you recall getting it?

A. Yes, sir.

Q. After receiving a copy of the notice of the abolition of the hostler helper jobs—are the hostler helpers, some of the men that are covered by this agreement that has just been introduced in evidence?

A. Yes, sir, they are covered by that agreement.

Q. And you were the Local Chairman representing the hostler helpers, is that correct, the outside hostler helpers?

A. Yes, sir.

Q. Are there other Local Chairmen here in Birmingham for the Firemen's Organization?

A. Yes, sir, at that time there were two others besides myself in that particular Lodge of our organization.

Q. What was that Lodge, what was the name of it, or what was the number of it?

A. South Wind Lodge 937.

Q. The Local Chairmen though are divided into Divisions, is that correct?

A. Yes, sir.
Q. On the Railroad?
A. Subdivisions.
Q. What was your Division?
A. We were all on the same Division, we had three Subdivisions here in Birmingham.
Q. What was your Subdivision?
A. Mine was S&NA.
Q. S&NA?
A. Yes, sir.
Q. What does that stand for?
A. South and North Alabama. It is sometimes referred to as the main line.
Q. When you got this notice with regard to the abolition of the hostler helpers jobs did you take this matter up with the officials of the Company?

Mr. Simpson:
We object to leading.

Mr. Pettus:
I am trying to save some time.

The Court:
I overrule the objection.

A. Yes, sir, I did.
Q. Did you also have conferences with the men involved, Dougherty, Grissom, and McCutcheon?

Mr. Simpson:
We object to leading him.

The Court:
Don't lead your witness. Overruled, however.

Q. Did you?

A. I talked to Dougherty. I remember talking to him individually, but whether or not I talked to McCutcheon and Grissom individually, I don't know. They were present at that Friday night meeting and heard that letter from Mr. Paschal read.

Q. Which officials of the Company did you take the matter up with yourself?

A. The Master Mechanic, Mr. Quiggins.

Q. Do you recall when you took it up with him?

A. It was on Wednesday or Thursday of the week preceding Sunday, October 23.

Q. How did you do that?

A. I called him.

Q. Did you take it up with him in person or by telephone?

A. I called him on the telephone.

Q. Will you just repeat as well as you recall the conversation that you had with Mr. Quiggins?

A. I called Mr. Quiggins and asked him what he was trying to do to me. I was referring to the abolition of the outside hostler helper jobs, and he apparently knew what I meant, because he laughed and said that it was none of his doing, that it came from higher up. He said that Mr. Kirchner had instructed him to abolish the outside hostler helpers jobs here in the Birmingham Boyles Terminal, and replace them with laborers, and that that was later confirmed by the officials in Louisville, and that so far as he was concerned his hands were tied.

He went further on to say that he had held off on that for 60 days or more because he had—he anticipated trouble when he tried to invoke it.

Q. Well, the result of this conversation with Mr. Quiggins was that he said he couldn't do anything about it?

A. Yes, sir.
Q. Is that right?
A. That's right.
Q. Did you take it up with any other official of the Railroad yourself at that time?
A. No, sir.
Q. Did you refer the matter to your General Chairman?
A. Yes, sir, I did.
Q. Who was your General Chairman at that time?
A. Mr. Jake Paschal.

Mr. Pettus:
Do you want to see this letter?

Mr. Simpson:
Yes.

Mr. Gibson:
May we see it?

(The letter was handed to counsel.)

Q. Is this a letter that you received from Mr. Paschal, dated October 20, 1955, with reference to hostler helper jobs?
A. Yes, sir.

Mr. Pettus:
We offer this letter in evidence and ask that it be marked Defendants' next exhibit.

Mr. Gibson:
No objection.

(Defendants' Exhibit No. 6 was marked for identification.)

Mr. Pettus:

May it please the Court we will read it at this time. This is on the letterhead of the Brotherhood of Locomotive Firemen and Enginemen, and dated October 20, 1955, at Louisville, Kentucky. And it is a letter addressed to Mr. W. S. Schoel, Director of Personnel, Louisville & Nashville Railroad Company, 908 West Broadway, Louisville 1, Kentucky.

(The letter was read to the jury.)

Q. Now, Mr. Otts, did you attend the meeting of your Local Union on Friday of that week?

A. I attended one Friday night of that week.

Q. Friday night?

A. Yes, sir.

Q. There has been some testimony about a letter being read. Was this the letter, Defendants' Exhibit 6, that was read at that meeting?

A. Yes, sir.

Q. Now, did you receive any advice from Paschal that the Company had replied to this letter?

A. I talked to Mr. Paschal some time the next week and he said that at that time that they never had answered him.

Q. They never did answer that letter?

A. No, sir.

Q. Up to the time you talked to him?

A. That's right, they ignored it.

Q. Was there any discussion of the hostler helper jobs or the abolition of those jobs at the Union meeting on Friday night?

A. To the best of my recollection that letter was read and there was no discussion carried on.

Q. Now, after the meeting was over, was there any discussion of the hostler helper jobs?

A. Well, there wah no discussion of it. Mr. Grissom, Mr. McCutcheon, and myself, and three or four more were standing down there on the sidewalk, or out in the street, I don't recall which, by the side of the meeting place, and Grissom I believe suggested that we get together and discuss the thing the following Sunday.

We needed to get some information as to how to handle the case, and what to do about it. The Company had abolished the craft, and that is something new to me.

Q. And on Saturday did you have any discussion that you recall with either McCutcheon or Thomas with reference to the abolition of these jobs? Do you recall any particular thing there?

A. I worked Saturday, I went to Montgomery the next Saturday.

Q. You went to Montgomery the next Saturday?

A. Yes, sir.

Q. Now, this notice that had been put up, that was on October 19?

A. Yes, sir.

Q. Had this notice created any discussion out there at the Boyles Yard among the employees?

A. Yes, sir, it created quite a bit of discussion, all crafts were discussing it. They said that since—

Mr. Simpson:

We object to what the crafts said.

The Court:

I sustain the objection.

Mr. Pettus:

We except.

Q. Did you hear any rumors of a possible work stoppage after that bulletin was put up on the board?

Mr. Simpson:
We object to what he may have heard from some undisclosed source, and whether he interpreted the rumor as being a work stoppage rumor.

The Court:
Overruled.

A. No, sir, I did not.
Q. You did not?
A. No, sir.
Q. Now, on the Saturday night before the Friday, did you have any conference with McCutcheon or Thomas in the washroom there, at the Boyles Yard with reference to the making of any picket signs or anything of that sort?
A. No, sir. I got in at 7:00 o'clock, 7:00 p. m. Saturday night. I believe that's right. I have my time book, if I can refer to it.
Q. You can refer to your time book.
A. Saturday was the 22nd, wasn't it?
Q. Yes, sir.
A. I got off at 7:15 Saturday night, and I went home and went to bed, and I didn't discuss it with them Saturday night.
Q. Had you had any conversation with either Mr. Thomas or Mr. McCutcheon in regard to the making of picket signs at any time prior to the work stoppage?
A. Well now, I was called for 5:00 o'clock that morning out of Boyles, and I got over to the roundhouse about 4:15, we have to go on duty 30 minutes

before call time, and there could have been some discussion about what we would do about signs in the event the Brotherhood called a strike. I don't remember too much about it. I may have talked to them and told them to get some signs, or not told them to get some signs, I don't know. But I do recall some kind of duscussion.

Q. There was a discussion about it?

A. Yes, sir.

Q. But at that time you were in contact with the Brotherhood, with Mr. Paschal in Louisville, is that correct?

A. Yes, sir, I had already been in contact with him.

Q. You had been in contact with him, and they asked you about the signs, and there was just a discussion that if the Brotherhood authorized a walkout, to have the signs ready, is that right?

A. Something to that effect.

Q. Is that right?

A. Yes, sir.

Q. Do you remember the day the work stoppage occurred on Sunday?

A. Yes, sir.

Q. Did you do any work on Sunday?

A. Yes, sir, I was called for 7:00 o'clock Sunday morning for a Yard job at Boyles.

Q. Are you a qualified engineer, Mr. Otts?

A. Yes, sir, that was the job—

Q. And also a fireman?

A. Yes, sir.

Q. What run did you make that day?

A. I was working on an extra Yard engine I believe.

Q. Extra Yard engine?

A. I don't think it was a regular run. I know it was a Yard job.

Q. What time did you get off?

A. 4:25.

Q. You got off that job at 4:25?

A. Yes, sir.

Q. Well now, you know Mr. Fleming, don't you?

A. Yes, sir.

Q. Did you see him, and hear him testify that you were at Rex's Barbecue at 3:00 o'clock?

A. Yes, sir, I heard him testify I was there in my street clothes, but I wasn't. I was over on the engine working.

Q. In your work clothes?

A. Yes, sir.

Q. Have you got your book there?

A. Yes, sir.

Q. Will you check that in your book, to double check that?

A. October 23 I had engine No. 16. Fireman R. E. Frazier. It was an extra Yard job. I went on duty at the roundhouse at Boyles at 7:00 o'clock. I was relieved at the roundhouse at Boyles at 4:25 p. m. I made an hour and twenty-five minutes overtime.

Q. When you were relieved did you go the washroom and change clothes?

Mr. Simpson:

Now, we object to telling him what he did.

The Court:

I sustain the objection to the question. It is a leading question.

Q. What did you do with reference to changing clothes that night? Did you change your clothes right then?

A. I went in the washroom and made out my trip card for me and the fireman, but I didn't change my clothes.

Q. You didn't change your clothes?

A. No.

Q. Did you leave that place?

A. Yes, sir.

Q. Where did you go?

A. I walked across the street to where my car was parked, got in my car, and went up to Mr. Parker's house.

Q. Was there anyone in your car with you?

A. No, sir, I was alone.

Q. What clothes did you have on when you went to Mr. Parker's?

A. I had on a pair of overalls, and a blue work shirt, and I had an old brown jacket with a fur collar on it that I wear.

Q. Were those the same clothes you had been working in all day?

A. Yes, sir.

Q. What time did you arrive at Mr. Parker's house?

A. It was some time between 4:30 and 4:45.

Q. Now where were the men when you arrived at the house?

A. Well, some of them were out in the yard and some of them were inside.

Q. Did you go inside?

A. I spoke to some of them as I went up, as I arrived there, and we stood around there a few minutes, and then walked on in.

Q. How many men, about, were at this meeting, do you recall?

A. I would judge around 20 or 25, something like that.

Q. And was there anyone there that was in charge of the meeting that you could see?

A. No, sir.

Q. Do you recall what was discussed at the meeting?

A. The abolition of the outside helpers was discussed there.

Q. Now, did you have anything to say about that?

A. Well, some of the men there, Kennedy or Sutterlin and McCutcheon said something about handling the thing with the General Chairman, and I told them that I had already talked to the General Chairman about it, and also Mr. Quiggins about it.

Q. You told them you had already talked to the General Chairman?

A. Yes, sir.

Q. Now, that is Mr. Paschal?

A. Yes, sir.

Q. And you talked to Mr. Quiggins, is that right?

A. Yes, sir.

Q. Did you tell them then what had been said by those men or not?

A. I don't know whether I did or not.

Q. Now, did anyone else that you recall have anything specific to say at that meeting?

A. No, sir, I don't recall anything else that was said there.

Q. Do you recall Mr. Kennedy's testimony here in this case, that he had some statement to make?

A. Yes, sir.

Q. Do you recall him testifying here?

A. Yes, sir.

Q. Do you recall independently of your own knowledge anything that Mr. Kennedy may have said?

A. The only thing I heard him say was that the General Chairman should be notified, or it should be taken up with the General Chairman first, or words to that effect.

Q. There have been some remarks attributed to Mr. Reese Thomas. Do you recall yourself anything that Mr. Thomas said?

A. No, sir, I don't recall hearing, having heard Mr. Thomas say anything.

Q. Now at this meeting, Mr. Otts, was it held—just tell us what part of the house it was held in?

A. It was in the basement of Mr. Parker's home.

Q. In the basement?

A. Yes, sir.

Q. Were the men sitting or standing?

A. Some of them stood up, and some of them sat down.

Q. Were they all together there, or were they somewhat separated in small groups?

A. No, they were more or less in small groups, talking amongst themselves.

Q. Was the talk being carried on at the same time by different groups?

A. Yes, sir.

Q. In other words little groups around were carrying on discussions about the matter?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Now did you see any show of hands or any voting there?

A. There was no such thing as that done there so far as I know.

Q. Did you call for any show of hands yourself?
A. No, sir.
Q. Did Mr. Thomas call for any?
A. I don't think Mr. Thomas said—opened his mouth up there, the best I can remember.
Q. And you saw nothing of that kind at the meeting?
A. No, sir.
Q. When did the meeting break up?
A. I would think around 5:00 or 5:10. It didn't last long, 20 or 30 minutes, something like that.
Q. Where did you go then?
A. I went home.
Q. And how long did you stay at home?
A. I stayed at home until about 7:30.
Q. Then where did you go?
A. I went over to the Rex's Barbecue.
Q. How long did you stay at Rex's?
A. Well, I stayed over there about 15 or 20 minutes, and then I brought my car back, back home, and I believe my wife and my family took me back over there and dropped me and they went on to town.
Q. Then you went back by Rex's after you went home, is that right?
A. Yes, sir.
Q. Your second time that you got to Rex's, do you recall about what time it was?
A. That was around 8:00 or 8:30, something like that.
Q. How long did you stay at Rex's?
A. Well, this time I stayed there until around midnight.
Q. Around midnight?
A. Yes, sir.

Q. Did you stay in the cafe or were you on the outside or inside, or just tell where you were, and what you were doing?

A. Well, I was just in and out there, I wasn't in any one particular spot.

Q. Did you see any indication from where you were that a work stoppage was in progress?

A. I saw the men start walking out over there.

Q. Do you recall about what time it was?

A. It was some time around 9:00 o'clock.

Q. Some time around 9:00 o'clock?

A. Yes.

Q. After you left the Yard that afternoon, when you got off your job, from that time until you went home from Rex's, which you say was at about midnight, did you go on the Company property any more for any purpose?

A. To the best of my knowledge and recollection I did not.

Q. You did not?

A. No.

Q. Now at midnight you went on home?

A. Yes, sir.

Q. Did you spend the rest of the night at home?

A. Yes, sir.

Q. On Monday do you recall what you did?

A. I got up about 5:00 or 6:00 o'clock Monday morning and went out and got my paper, and then there was a big, looked about like a 2 inch headline over the front page that stated, or words to the effect that the L&N rail workers had walked out. So I went over to the barbecue stand there, and there were some people standing around over there, and I stood there, stayed around there for maybe a couple of hours, and then I went back home. And Monday

afternoon I come—well, about noon I guess, I got in touch with Mr. Kirchner, that is the Division Superintendent, and I asked him if we could get together and see if we couldn't get these men back to work, that everybody was out over there so far as I knew, they were all losing time, and I would like to see them get back to work. And he said that suited him, he said come down to his office at about 2:00 o'clock.

Q. This was on Monday?

A. On Monday, yes, sir. Mr. Simpson is going to take exceptions to this because I couldn't remember it when my deposition was taken. But anyway I went down to Mr. Kirchner's office at 2:00 o'clock and discussed with him the possibility of getting these men back to work.

Q. Who was there at Mr. Kirchner's office?

A. Well, Mr. Parsons was there, and—

Q. Now, who is Mr. Parsons?

A. He was the Assistant Superintendent at that time.

Q. He was Assistant to Mr. Kirchner?

A. He was Assistant Superintendent, yes, sir.

Q. In other words, Mr. Kirchner was the senior official for the Railroad in this area?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. And Mr. Parsons was his Assistant?

A. Well, the Superintendent has an Assistant to the Superintendent, which is Mr. G. H. Moore, and there is an Assistant Superintendent, which is Mr. J. R. Parsons at that time.

Q. Now, how many men or how many employees were involved in the work stoppage out there?

A. Well, Mr. Kirchner said there were better than 2,500.

Mr. Simpson:
We object to what somebody said about how many there were.

The Court:
I didn't get the question.

Mr. Pettus:
I asked him how many men, how many employees were involved in the work stoppage out there at the time of his conference with Mr. Kirchner.

The Court:
I overrule the objection.

A. Did you get the answer? Did everybody get that?

The Court:
What was the answer?

The Witness:
Mr. Kirchner said that there were over 2,500 people involved in it, not working.

The Court:
Did you know that of your own knowledge?

The Witness:
No, sir, I didn't know.

The Court:
I will exclude the answer, gentlemen. That will be excluded.

Mr. Pettus:
We except. Mr. Kirchner was the official of the Railroad Company at that time, senior official at that time in this area, alter ego of the Company I think for purposes of that sort.

Mr. Simpson:
We withdraw the objection and let it in.

The Court:
All right, the objection is withdrawn.

Mr. Simpson:
To show the jury what sort of thing it was.

Q. Mr. Otts, during the time that the work stoppage was in progress, the employees who were off work were not paid for the time they were off, isn't that correct?
A. To the best of my knowledge they were not paid.
Q. Now in this conference here with Mr. Kirchner who was present? You say Mr. Parsons was there?
A. Yes, sir.
Q. Was there anybody else there besides you and Mr. Parsons and Mr. Kirchner?
A. There was a fireman off of the N&D Division, L. G. Clay, that went up there with me.
Q. Just state what was said in that conference as best you can recall.

A. Well, I told Mr. Kirchner that it was my opinion that if he would reestablish those hostler helper jobs that everybody would go back to work, and he told me in substance that he didn't have the authority to reestablish them, that people in Louisville would have to do that.

He went on further to say that he would contact those people in Louisville, find out what their answer was, and notify me. He said that he certainly would like to see the men go back to work. We were very much in accord on that.

Mr. Simpson:

We object to that as a conclusion of the witness.

The Court:

I sustain the objection to the last statement.

Q. In that conversation you stated that it was your opinion that they would go back to work if the job was reestablished?

A. Yes, sir, that's right.

Q. How long did the conference with Mr. Kirchner last?

A. It didn't last long, 30 or 40 minutes, something like that.

Q. After you left there do you recall where you went?

A. I went to the Molton Hotel with Mr. Clay, and awaited Mr. Kirchner's call. I told him that's where I would be.

Q. Did Mr. Kirchner call you?

A. Yes, sir. Mr. Kirchner called after a length of time, I don't recall how long.

Q. What did he say in that conversation, I mean that telephone conversation?

A. He said that his people in Louisville just were not willing to restore the jobs.

Q. Now, did you leave the Molton Hotel?

A. Yes, sir. I don't recall what time I left there, but I did leave there.

Q. Where did you go then?

A. I went home.

Q. Did you go anywhere else that day from home?

A. No, sir, I don't think so.

Q. Now, on Tuesday, do you recall where you were on Tuesday?

A. Well, on Tuesday I went to the Airport to meet Mr. N. B. Cunningham.

Q. Who is Mr. Cunningham?

A. Mr. Cunningham is Vice-Chariman of the General Grievance Committee, of the Brotherhood of Locomotive Firemen and Enginemen.

Q. Does he work with Mr. Paschal, the General Chairman?

A. Well, he takes Mr. Paschal's place, in other words, he is his Agent, so to speak.

Q. You met him?

A. Yes, sir.

Q. On Tuesday?

A. Yes, sir.

Q. And did you, on Tuesday, did you visit the Yards or any part, or the downtown station or any part of the Company property that you recall?

A. I visited Mr. Kirchner's office again.

Q. You went to Mr. Kirchner's office again?

A. Yes, sir.

Q. Who was with you this time?

A. Mr. Cunningham.

Q. Mr. Cunningham?

A. Yes, sir.

Q. Will you tell us the gist of your conversation with Mr. Kirchner there on the second occasion?

A. Well, on the second occasion it was virtually the same as the first. We again requested, or told him that in our opinion that if he would restore the outside hostler helpers jobs that the men would go back to work. He said he would again contact Louisville, it was still out of his hands.

And he did say that he wished that the men would go back to work, whether or not the jobs were restored. And Mr. Cunningam was—wanted the men to go back to work too.

Q. Did you do anything on Wednesday that you recall?

A. Yes, sir.

Q. What did you do?

A. Well, Tuesday and Wednesday both I had conferences at Judge Hare's request in his chambers.

Q. How long did that take? We are not going into that, but how long did that take?

A. It lasted a pretty good while.

Q. Then on Wednesday, did you go back to the Company's property on Wednesday at any time?

A. No, sir, not on Wednesday. Mr. Cunningham got in touch with Mr. Kirchner, or Mr. Kirchner got in touch with Mr. Cunningham, one of the two. And anyhow they decided to have another conference.

Mr. Simpson:

We object to what two different people aside from him decided.

The Court:

Sustained.

Q. Did you have any further contact with the Company officials on Wednesday?

A. I believe I was at your office when Mr. Cunningham called me and told me to meet him at the Frank Nelson Building, or meet him at the Molton Hotel, and we would go to the Frank Nelson Building for a conference with the L&N officials

Q. Did you go there and have a conference?

A. Yes, sir, we met up in Mr. Simpson's office.

Q. What officials were there at that time?

A. Well, Colonel Love, the gentleman that has been sitting here in the Courtroom all the week was there. Mr. Kirchner, he was there, Mr. Jack Davis, Assistant Director of Personnel was there.

Q. Were there any other officials of the Brotherhood there?

A. None other than Mr. Cunningham and myself.

Q. Mr. Cunningham and yourself were the only two that were there?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Will you tell us what transpired at that meeting there?

A. Well, we just tried to get together on how to get the men back to work, and Mr. Cunningham told them that he would use his good offices, or his good influence, or words to that effect, to get them back. That is about all that transpired here.

Q. Was this on Wednesday?

A. Yes, sir.

Q. About what time was this conference at the Frank Nelson Building?

A. It was around between 5:00 and 6:00 o'clock in the afternoon.

Q. After that conference, where did you go?

A. I went back to the Molton Hotel with Mr. Cunningham.

Q. And who did you see at the Molton Hotel?

A. Well, we saw several people there. They were gathering in Mr. Cunningham's room. Among the crowd was Mr. J. D. Price.

Q. Who is he?

A. He is Local Chairman for the BRT.

Q. That is what?

A. The roadmen, Brotherhood of Railroad trainmen, and Mr. E. H. Eager, he was acting in Mr. Lester Watkins absence, Watkins was in Louisville I understand. And there was, L. A. DuBose was there, W. C. Huckaby was there. There were some more people there, but I don't recall who it was.

Q. Was there anything discussed at the conference there between Mr. Cunningham and these other gentlemen that you have named?

A. Well, Mr. Cunningham told them what had taken place up there.

Mr. Simpson:

May it please the Court, I object to what happened in their conference. There doesn't seem to have been anybody connected with the Plaintiff in any official capacity there.

The Court:

I sustain the objection.

Q. Well, did the men go back to work that night?

A. Yes, sir, I understand they did.

Q. Did you instruct any of them to go back to work?

A. No, sir.
Q. You did not?
A. No, sir.
Q. And when did you go back to work?
A. I don't think I went back to work until Saturday.
Q. Until Saturday?
A. The following Saturday.

Mr. Pettus:
I believe that's all.

Cross Examination

By Mr. Simpson:
Q. Mr. Cunningham was the ranking Brotherhood of Locomotive Firemen and Enginemen, that is your Union, here on the ground, wasn't he?
A. Yes, sir, at that time.
Q. During that strike?
A. Yes, sir.
Q. He was next to Mr. Paschal in authority on the L&N?
A. Yes, sir.
Q. Among the L&N employees?
A. Well, among the firemen.
Q. Yes. I mean among the L&N employees that were firemen.
A. Yes, sir.
Q. Your Union?
A. He don't have anything to do with the other crafts.
Q. Well, he did that night, didn't he? Didn't he tell them up there—you told us Mr. DuBose was up there. What craft was he in?

Mr. Pettus:

We object to going into these things. You prevented me from going into this. He objected to my going into anything at the meeting.

The Court:

It was the question of conversation I think there.

Mr. Simpson:

I didn't want any self-serving declarations that they may have said to one another.

Mr. Taylor:

We object.

The Court:

Overruled.

Mr. Pettus:

We object on the ground that he didn't let us go into it.

Q. Who is Mr. DuBose that you have told us was up there?

A. A fireman.

Q. Who is Mr. Huckaby?

A. He is a fireman.

Q. Who was this first or second man you mentioned, Mr. Price?

A. Price was a conductor.

Q. He was a member of the Brotherhood of Railroad Trainmen, wasn't he?

A. Yes, sir, Local Chairman for the road men I understand.

Q. All right, who else was there?

A. E. H. Eager.

Q. E. H. Eager?

A. Yes, sir.

Q. Now, who else?

A. He was acting in Mr. Lester Watkins place.

Q. Mr. Watkins is what?

A. He is Local Chairman for the Brotherhood of Railroad Trainmen, for the switchmen, Yard men.

Q. Trainmen and switchmen?

A. And Yard men.

Q. Were there any other crafts represented up there?

A. There were some more people there. I don't know what crafts they were from.

Q. These other crafts were up there trying to get Mr. Cunningham to get the firemen to go back to work, weren't they?

A. I don't know what they were doing up there.

Q. You know that all of these other crafts were anxious to go back to work, and the switchmen were about to run over the pickets out there at the Hillside gate, and they were all up there trying to get Mr. Cunningham to get the firemen to go back to work so they could go back to work, weren't they?

A. I don't know anything about that.

Q. Anyway you know that that night Mr. Cunningham did get the firemen to go back to work in some way, didn't he?

A. I know that everybody went back to work that night.

Q. You know that after that conference with all of these people that you are telling us about with Mr. Cunningham, the firemen went back to work, didn't they?

A. Everybody went back to work.

Q. I asked you about the firemen.

A. Firemen and all the rest.

Q. Yes.

A. It was no good for the firemen to go back without the rest of them.

Mr. Simpson:

May it please the Court, I would rather the gentlemen would not argue the case, but let his lawyers argue it. I move to exclude his argument.

The Court:

That is excluded, gentlemen.

Q. Now then, there was not any other genereal officer of the Trainmen there, was there, except these Local Chairmen?

A. I don't know who those men were.

Q. You didn't see any of them there?

A. I don't know who those men were.

Q. I am asking you if you saw any general officers of the Trainmen coming in here from Louisville or anywhere else?

A. The only general officer I know of the Trainmen is Mr. N. E. Lane, and I didn't see him.

Mr. Simpson:

May it please the Court, I asked him a question, if he saw anybody there he knew to be a general officer of the Trainmen, and I would appreciate an answer.

Mr. Pettus:

He just answered it.

The Court:
Was Mr. Lane there?

The Witness:
No, sir, he was not there.

The Court:
Well, I sustain the objection then.

Q. Now then, did you see any general officer of any other of the Brotherhoods there except Mr. Cunningham?

A. I am not acquainted with them.

Q. Did you see anybody that you knew to be a general officer of any of the other Brotherhoods except Mr. Cunningham?

A. No, sir.

Q. All right. How long after that conference got together up there in Mr. Cunningham's room was it before the word went out that the work would be resumed?

A. I do not know.

Q. Now, you have been telling us about some conversations here with Mr. Kirchner. Mr. Kirchner now lives in and has been transferred to Louisville, hasn't he?

A. He has been transferred to Louisville. I don't know if he lives up there or not.

Q. Well, he lives there. You saw him up until last night sitting right there (indicating)?

A. Yes, sir.

Q. You know he is not here today, don't you?

A. Yes, sir, I know he is not here, I don't see him.

Q. Mr. Otts, you say Mr. Kirchner and you got together at 2:00 o'clock on Monday?

A. Yes, sir.

Q. And that you knew I was going to question you about that?

A. Yes, sir.

Q. And how did you know that?

A. Well, that's the pattern you have been following all morning.

Q. The pattern I have been following?

A. All through, yes, sir, yes, sir.

Q. Well, you know that you didn't know when you were examined on the 22nd of November, which was less than a month after this walkout occurred, you didn't know anything about any such meeting as that at that time, did you?

A. I told you I couldn't recall the events on that Monday. I also told you that I had—

Q. Did I ask you what else you told me? I asked you if you recalled that meeting at the time you were examined less than a month after that strike?

A. At that time I couldn't recall it.

Q. All right, sir. Now, you say you told Mr. Kirchner at this meeting that you say you had at 2:00 o'clock on Monday afternoon that if the hostler jobs were reestablished the men would go back to work?

A. No, sir, I didn't say that.

Q. I misunderstood you then. What did you tell us?

A. I told him it was my opinion that if the hostler, outside hostler helping jobs were reestablished that the men would go back to work.

Q. You also told him it was your opinion that the outside hostler helpers, that if they were not re-established, that the men would not go back to work, didn't you?

A. Yes, sir.

Q. And the outside hostler helpers jobs were in your organization?

A. Yes, sir, that's right.

Q. And you were down there representing those people at that time?

A. No, sir, I was not down there representing anybody. I was down there trying to get everybody back to work.

Q. You were Local Chairman?

A. I was Local Chairman.

Q. Well, after you told him that you didn't think they would go back to work unless the outside hostler helpers jobs were reestablished, what time did you leave Mr. Kirchner's office?

A. It was somewhere around 3:00 o'clock.

Q. On the afternoon of Monday?

A. Yes, sir.

Q. You tell us I believe that at this meeting on Friday night—Friday would have been the 20th day of October, wouldn't it?

A. No, sir.

Q. Wouldn't it?

A. It would have been the 21st.

Q. Friday would have been the 21st of October, wouldn't it?

A. Yes, sir.

Q. Sunday was the 23rd?

A. Yes, sir.

Q. Saturday was the 22nd?

A. Yes, sir.

Q. And Friday would have been the 21st, wouldn't it?

A. Yes, sir.

Q. This letter that you read here a while ago is dated the 20th, which would have been Thursday, wouldn't it?

A. Yes, sir.

Q. Now at this meeting on Friday night, the 21st, you or Mr. Lloyd, who was the Secretary of the Brotherhood meeting, read that letter?

A. Yes, sir, I believe Mr. Lloyd read it.

Q. Now this letter from Mr. Paschal was written to Mr. W. S. Schoel, Director of Personnel, Louisville & Nashville Railroad Company, Louisville, Kentucky, wasn't it?

A. Yes, sir.

Q. With a copy to you and a copy to Mr Lloyd?

A. Yes, sir.

Q. Now if that letter was written on Thursday, which would be October 20?

A. Yes, sir.

Q. It probably was recived by you here the next day, wasn't it?

A. That's right.

Q. It was probably received by everybody the next day?

A. Yes, sir, I imagine it was.

Q. It was probably received then on Friday the 21st?

A. Yes, sir.

Q. Had you replied to that letter prior to the following Sunday?

A. That letter didn't request a reply so far as I could see.

Q. My question is had you made any response to that letter before the next Sunday?

A. That letter was in response to my telephone call to Mr. Paschal, and didn't—

Q. Did you respond to the letter in any way?

A. No, sir.

Q. This letter was written to the Company because you had called Mr. Paschal about this abolition?

A. Yes, sir, that's right.

Q. And you got that letter. I am asking you if you made any reply to it, either on Saturday or Sunday?

A. No, sir.

Q. After you got it?

A. No, sir.

Q. Do you know whether Mr. Lloyd did? He was the Corresponding Secretary, wasn't he, or the Secretary?

A. I don't have any idea he did, because the letter doesn't require a reply.

Q. Well, you say you talked to Mr. Paschal some time the next week?

A. Yes, sir.

Q. About this letter?

A. Yes, sir.

Q. What time next week did you talk to him?

A. I don't recall what time it was.

Q. You talked to Mr. Paschal on Wednesday, didn't you?

A. I talked to him Wednesday or Thursday, I don't know which.

Q. Wednesday or Thursday?

A. Yes, sir.

Q. And Mr. Paschal, you told the jury a while ago, told you that the L&N just ignored this letter?

A. Yes, sir.

Q. Well, the strike came on Sunday, didn't it?

A. Well—

Q. It didn't come on the next Wednesday or Thursday?

A. That's right.

Q. Mr. Paschal was handling this thing with the L&N in the due and regular routine for handling Union grievances, wasn't he?

A. Yes, sir.

Q. And his letter was due to go into the Louisville & Nashville Railroad Company, and they got it you say Friday, probably on Friday?

A. That's right, yes, sir.

Q. Now Saturday is usually a Railroad holiday, isn't it?

A. I don't know, its not a holiday for me.

Q. I know, its not a holiday for a lot of us, but usually Saturday is not a full work day for a Railroad office, is it? The clerks and everybody are short on Saturday?

A. I don't know.

Q. All right. Sunday is not usually a full work day?

A. I don't know about that.

Q. For correspondence. And the strike happened Sunday night, hadn't it?

A. The walkout happened Sunday night, yes, sir.

Q. We won't argue about what it was, but you are telling this jury that the L&N Railroad was ignoring this protest because some time the following Wednesday or Thursday Mr. Paschal told you that the L&N was ignoring it?

A. Yes, sir.

Q. Although the strike had happened the previous Sunday?

A. Well, that—I didn't say anything about the walkout, I said that the L&N Railroad Company had ignored it.

Q. Could they have done anything about it before Sunday?

A. Certainly they could have done something about it.

Q. What could they have done?

A. Well, am I going to be at liberty to explain what they could have done?

Q. Could they have gotten a letter back to Mr. Paschal and to you and these other people after they got this letter probably on Friday? Would you expect the L&N to decide what they were going to do?

A. Yes, sir.

Q. And get a reply back before Sunday night?

A. If you will allow me to tell what they could have done I will do it.

Q. I am just asking you. You stated they were ignoring this letter, that the L&N Railroad Company ignored this letter. You stated that for the purpose of creating an impression here then that the L&N Railroad was highhanded about it.

I will ask you whether or not on Saturday morning around 5:00 o'clock you were having picket signs printed or painted or made arangements to have picket signs printed the day after this letter was written?

A. No, sir.

Q. On Saturday morning?

A. No, sir.

Q. The second day after, that is Saturday morning?

A. No, sir.

Q. How is that?

A. I remember something about it. I don't remember what day it was or anything like that.

Q. You remember it was Saturday morning, you just looked on your book and saw you were called for work at 5:00 o'clock on Saturday morning, didn't you?

A. Yes, sir, but I didn't say I had a conference with these men on Saturday morning.

Q. You heard Mr. Reese Thomas, your fellow Defendant here, say that you did, didn't you?

A. Yes, sir, I heard him say it.

Q. Is your recollection contrary to his about it?

A. I told you I didn't remember it, I don't recall when it was, when it took place.

Q. You heard Mr. Sexton say it too, didn't you?

A. Yes, sir.

Q. And you heard Mr McCormack--I mean Mr. McCutcheon, he hasn't testified, but Mr. McCutcheon was also present, wasn't he?

A. I don't know whether he was or not.

Q. So you, if this was an orderly way for Mr. Paschal to handle this, through channels, you were making preparations to handle it outside of channels as early as Saturday morning at 5:00 o'clock, weren't you?

A. No, sir.

Q. No? And yet you are telling this jury the L&N Railroad ignored this thing because you heard Mr. Paschal say that, on the following Wednesday or Thursday after the strike had already happened and cleared up—

Mr. Pettus:

We object to that, argument.

The Court:

I sustain the objection. Gentlemen, we are going to take a 20 minute recess.

(A short recess was had.)

Q. Now, Mr. Otts, when you got in Sunday afternoon you didn't take time in the washroom to change your clothes, you just went in and probably washed your hands, and then went right on out. Now, when you came off the L&N's property that Sunday afternoon after getting in from your run, did you come out the gate that is right at Rex's there?

A. Yes, sir.

Q. That is where your washroom is, right inside of that gate, isn't it?

A. Yes, sir.

Q. You went right out, right across the street there is Rex's, isn't it?

A. Yes, sir.

Q. As you went across the street there do you remember whether you went in Rex's and got a Coca-Cola or anything?

A. No, sir, I don't think I did.

Q. You just got in your car and went right straight on to Mr. Parker's place?

A. Yes, sir.

Q. Where was your car parked?

A. It was over there by the side of Rex's.

Q. Over there by the side of Rex's?

A. Yes, sir.

Q. Now as you went over there to get in your car did you see Mr. Fleming there?

A. I don't know if he was there or not.

Q. So you don't know whether Mr. Fleming saw you there or not, do you, that Sunday afternoon?

A. I know he didn't see me at 3:00 o'clock at Rex's.

Q. I don't care about what time it was. I say whether he saw you there that afternoon as you went over there to get in your car by Rex's?

A. I don't know whether he was there or not.

Q. I say you don't know whether he was there or not, and he may have seen you over there because you went right by Rex's and got in your car, didn't you?

A. Now, if he was there he could have seen me.

Q. That's what I say. Now when you got to the meeting, the meeting hadn't started, had it?

A. I don't know, sir.

Q. Well, you remember you went in there, and there were still some of them out in the Yard, wasn't there?

A. Some of them were outside, and some of them were inside.

Q. Before the meeting started they all got inside, didn't they?

A. I don't know about that now.

Q. Do you know whether Mr. Fleming was there or came up later, when you got there?

A. I think he was already there.

Q. You think he was already there?

A. Yes, sir.

Q. Do you remember distinctly whether Mr. Fleming was there when you got there or not?

A. No, sir, I don't.

Q. Oh, you don't, do you?

A. No, sir.

Q. So you don't know whether Mr. Fleming saw you at Rex's and also saw you at Parker's that afternoon, do you?

A. I don't know where Mr. Fleming saw me.

Q. You know he saw you at Parker's don't you?

A. He may have seen me. I don't know whether he saw me or not.

Q. Well, you were there, weren't you?

A. Yes, sir, I was there.

Q. And Mr. Fleming was there, wasn't he?

A. Yes, sir, I believe he was.

Q. All right. Now you say that you didn't take a vote on whether to strike or not strike there that night or that afternoon, that Sunday afternoon at Mr. Parker's?

A. No, sir, I didn't take any vote.

Q. Your memory is very clear about that now, isn't it?

A. Well, I think I would have remembered it if I had done it.

Q. You would have been more likely to remember it twenty-nine days after it happened than you would now, wouldn't you?

A. Well, I recall something about when I went to see Mr. Kirchner, after that was taken.

Q. That has come back to your mind now since Mr. Kirchner is not here, that's pretty clear to you?

A. That didn't have anything to do with it.

Q. It didn't have a thing in the world to do with it, the fact that Mr. Kirchner has gone home?

A. No, sir.

Q. All right. Now you also remember, Mr. Otts, that you testified here twenty-nine days after this thing is supposed to have occurred, in that pretrial hearing at that time, and you have read this deposition, haven't you?

A. Yes, sir, I have read it.

Q. You know every word that is in it almost, don't you?

A. No, sir, I don't.

Q. How many times have you read it over?

A. I read it a couple of times.

Q. A couple of times, right recently too, haven't you, getting ready for the trial, haven't you?
A. Yes, sir.

Mr. Pettus:
What page?

Mr. Simpson:
I want to refer him briefly to page 38, a little bit on page 38:

"Q. You testified you didn't on that occasion at that meeting Sunday afternoon, October 23, 1955 call for a show of hands on the question whether or not the matter would be handled through channels or otherwise?
"A. I don't recall having a question and a show of hands.
"Q. Are you saying you didn't do that?
"A. I'll say I don't recall.
"Q. You do not want to say you didn't do it?
"A. I don't recall any such occasion on my part.
"Q. Your best judgment is that you hadn't—your best judgment is if you hadn't you would recall it?"

Then your attorney objected, and another question:

"Q. You know of nothing that causes your memory to fail on that matter?
"A. No, sir."

So your recollection at that time was that you couldn't say positively one way or the other about that?

Mr. Pettus:
We object to that "positively." That's not in anything that he has read.

The Court:
Overruled.

Mr. Pettus:
We except.

A. To the best of my knowledge—
Q. I'll just put it this way, these questions were asked you and these answers made, weren't they, Mr. Otts?
A. Yes, sir.
Q. At that time. All right. Now during the course of that strike or work stoppage you talked to Decatur and Montgomery by long-distance telephone, didn't you?
A. Yes, sir.
Q. Who did you talk to in Montgomery?
A. Mr. Byram called me from Montgomery.
Q. Byram?
A. Yes, sir.
Q. Byram, he is one of the men mentioned in connection with Mr. Hicks, and Mr. Byram?
A. Yes, sir.
Q. In the testimony here the other day, wasn't it?
A. Yes, sir.
Q. That is the Byram you are talking about?
A. Yes, sir.
Q. He is a fireman here that lives at Birmingham?
A. Yes, sir.
Q. He is a fireman, a member of your Local?

A. Yes, sir, that's right.
Q. How many times did you talk to Mr. Byram?
A. One time.
Q. Do you remember what morning that was?
A. No, sir, I don't.
Q. It was during the strike, was it?
A. Some time during the stoppage.
Q. During the stoppage?
A. Stoppage, yes, sir.
Q. As a matter of fact it was either Monday night or early Tuesday morning, wasn't it?
A. I don't remember when it was, Mr. Simpson
Q. Now, do you remember talking to—or who do you remember talking to in Decatur?
A. Well, Mr. Barker called me from Decatur.
Q. Who is Mr. Barker?
A. He is a hostler up there.
Q. A hostler?
A. Yes, sir.
Q. He was in your Brotherhood, was he not?
A. No, sir.
Q. A member of your Brotherhood?
A. No, sir.
Q. He was not?
A. No, sir.
Q. All right, who else called you?
A. Mr. Scoggins.
Q. Mr. Scoggins?
A. Yes, sir.
Q. Who is Mr. Scoggins?
A. He is a fireman.
Q. He is a member of your Brotherhood, isn't he?
A. Sometimes he is, sometimes he's not.
Q. He's kind of in and out, is he?
A. Yes, sir.

Q. Now when Scoggins, when did you talk to Mr. Scoggins?

A. Some time during that period, I couldn't tell you what day it was.

Q. As a matter of fact you talked to him Monday night, didn't you?

A. I told you I didn't know when I talked to Scoggins.

Q. I thought maybe it would refresh your recollection.

A. No, sir, I don't remember.

Q. You can't know?

A. No, sir.

Q. Did you talk to Mr. Dismukes any?

A. No, sir.

Q. Did you talk to either of the three men that left here on Monday afternoon and went to Decatur? You have heard testimony about that, didn't you?

A. Are you referring to Barnett, Pennington and Bentley?

Q. Mr. Red Pennington, yes, Mr. Barnett and Mr. Bentley.

A. No, sir, I didn't talk to them.

Q. Mr. Barnett was a former Decatur man, wasn't he, Bruce Barnett?

A. So far as I know he never lived in Decatur.

Q. Well, didn't you hear him testify he used to work up there?

A. The only work he has ever done up there is extra work from the Extra Board here in Boyles.

Q. He knew a good many people in the Decatur Yards?

A. I don't know how many he knew.

Q. Mr. Bentley was originally from Decatur, wasn't he?

A. I think he used to live up there.

Q. He used to live up there?

A. Yes, sir.

Q. Related to a good many people that work for the L&N Railroad?

A. I couldn't tell you about that.

Q. Or some people that work for the L&N Railroad?

A. I don't know.

Q. Who selected those two men that were acquainted in Decatur to go with Red Pennington to close up Decatur?

A. I can't tell you.

Q. You can't tell us?

A. No, sir.

Mr. Simpson:

I believe that's all I want to ask Mr. Otts, Your Honor.

Mr. Pettus:

Your Honor, I have a question I would like to ask Mr. Otts.

Re-Direct Examination.

By Mr. Pettus:

Q. Mr. Otts, did you yourself commit any act of violence during the entire work stoppage?

A. No, sir.

Q. Did you instruct anybody else to commit any act of violence?

A. No, sir.

Q. Or did you instruct anybody else to intimidate any employees of the L&N in any way?

A. No, sir.

Q. I will ask you whether you had any knowledge of any act of violence being committed during the work stoppage?

A. No, sir.

Mr. Pettus:
That's all.

The Court:
All right, come down.

Mr. Simpson:
That's all.

(Witness excused.)

Mr. Pettus:
Mr. McCutcheon.

C. L. McCUTCHEON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. C. L. McCutcheon.

Q. What do you do now Mr. McCutcheon?

A. I am employed at the Lone Star Cement Corporation.

Q. In October, of 1955, where were you employed?

A. L&N Railroad.

Q. What was your job in October, 1955, in the early part of it?

A. Outside hostler helper.

Q. Were you one of the men whose jobs were abolished by that notice?

A. I was.

Q. Of October 18?

A. Yes, sir.

Q. Did you receive a copy of that notice?

A. Yes, sir.

Q. And what labor organization were you a member of?

A. BofLF&E.

Q. You were in October, 1955 a member of that organization?

A. Yes, sir.

Q. Did you attend a meeting of your Brotherhood on Friday, October 21?

A. I did.

Q. Where was that meeting held?

A. At the Masonic Hall in Inglenook.

Q. Was this letter here that has been offered as one of the Defendants' exhibits that was written by Mr. Paschal, was that letter read at that meeting?

A. I believe it was.

Q. After the meeting did you have any talk with anyone?

A. Yes, sir, several of us had a conversation downstairs.

Q. Downstairs?

A. Yes, sir.

Q. Where were you standing when that conversation took place?

A. Well, we were there on the sidewalk or next to the curb, between the sidewalk and the curb.

Q. Do you remember who was present?

A. Myself, George Lloyd, Bill Grissom, I believe Fleming was there, Mr. Parker. That's about all I'm sure of right now.

Q. Mr. Fleming also did hostler helping work, did he?

A. When we were off, he would fill in, yes, sir.

Q. When you were off?

A. At times. If he wasn't available, they usually put a laborer on.

Q. What was the discussion at that meeting held outside of your hall there?

A. Well, after we came downstairs and got down on the sidewalk, the first thing I can remember about it, pertaining to it, was Mr. Parker invited us to come to his house at 4:30 Sunday evening and have a general discussion. He said pass the word around, tell all the boys you know to meet up at my house.

Q. Now at any time prior to that meeting at Mr. Parker's house did you have a conversation with Mr. R. A. Sutterlin, l-i-n?

A. No, sir, I'm most certain I didn't. You say before I went to Mr. Parker's house, or before the Friday night meeting?

Q. I'm talking about before Mr. Parker's meeting.

A. Oh, yes, sir.

Q. You had had a conversation with Mr. Sutterlin?

A. I am not sure whether I said anything.

Q. Were you present?

A. I was present when a conversation was taking place.

Q. Who else was present?

A. Us three is all.

Q. Who is the other man?

A. Mr. Thomas.

Q. Reese Thomas?

A. A. R. Thomas and myself.

Q. A. R. Thomas and Sutterlin. Tell us what was said there.

A. We had been over to the North Yard and swapped engines, carried an engine back to the roundhouse, and coming back up the northbound freight lead, and Engineer Parrot, Fireman Sutterlin were on the spot. They called me and said, on the spot, the track next to this northbound freight lead, and I noticed Sutterlin leaned out of the window and dropped his arm. That is a stop signal on the railroad. And Mr. Thomas eased up even with the engine and stopped.

Sutterlin came off of their engine, came up in the cab of the engine we were on, and said he had heard that there was to be a meeting at Parker's house.

We verified it, Mr. Thomas and myself. I don't know whether I said anything or not, but it was verified.

Q. Was there anything else said in that conversation that you recall?

A. That's all I can recall.

Q. Did Mr. Sutterlin turn up at the meeting?

A. Yes, sir, he was there.

Q. Prior to the time of the meeting at Mr. Parker's house did you have any conversation with Mr. Otts and Mr. Thomas with reference to signs?

A. Yes, sir.

Q. Where did that occur?

A. That was Friday night—it would have been Saturday morning, around 4:00 o'clock I imagine, a. m., we had a discussion. Mr. Otts seemed to feel that the General Chairman would authorize a strike about

those jobs being abolished. He wanted to be prepared in case.

Q. Did you have anything to do with obtaining the signs?

A. No, sir, I didn't go to the sign place. I never have been there.

Q. Did you ever see any signs displayed during the work stoppage?

A. I haven't saw one of them et.

Q. You haven't seen one of them yet?

A. No, sir.

Q. Now, when did you get off the job Sunday?

A. Sunday?

Q. Saturday. You got off Saturday, didn't you?

A. And I worked Saturday night.

Q. You worked Saturday night?

A. I was off at 7:00 o'clock.

Q. Was your next job assignment the last shift on Sunday night?

A. Third shift Sunday night.

Q. Third shift Sunday night?

A. Yes, sir.

Q. You went to the Parker meeting?

A. Yes, sir.

Q. The meeting at Parker's house, didn't you?

A. Yes, sir.

Q. Did you go with anyone?

A. Yes, Mr. Thomas came by and picked me up.

Q. What time did you arrive there?

A. At the meeting?

Q. Yes.

A. I think we got there right about 4:30, real close to that.

Q. Where was the meeting held, what part of the house?

A. A big open basement under, beneath Parker's house.

Q. Do you remember the discussion that occurred at the meeting?

A. Not very much. It was mighty disorganized, and noisy, men standing around in small groups, talking among themselves.

Q. Do you remember, did you have anything to say?

A. Yes, I believe I did say a few words.

Q. What did you say?

A. I told the men, what few was there next to me, whether it was one or two or three, I don't know how many heard it, that I appreciated the men meeting there on our behalf, and doing what they could do for us. And I explained that I had labor seniority in the shop that I could roll back on, and Mr. Dougherty, the second shift hostler helper, had labor seniority, and Mr. Grissom could draw his compensation while his job was, the abolishment was being handled through the channels.

Q. What do you mean by labor seniority, Mr. McCutcheon?

A. When I was hired in for railroading there I was 18 years old, in 1939. I was hired in as a laborer. I maintained my labor seniority.

Q. Now, does that mean if your hostler helper job was abolished, then you rolled back into a labor job, is that right?

A. Yes, my seniority entitled me to do it.

Q. It did entitle you to do that?

A. Yes.

Q. Now, do you remember anything that Mr. Otts or Mr. Kennedy or Mr. Brown or anybody else at the meeting said?

A. Mr. Otts explained that, the best I grasped it, that he was handling the matter, or started handling it with Mr. Paschal in Louisville. And I did hear Kennedy say a few words, start to say something, and seemed to be disturbed. There was a fellow there that I would hate to say, he was feeling pretty good, and he seemed to be bothered about this guy being there. And this fellow kept butting in, something about the 58 day club, just wanting to know what 58 day club meeting he was in.

Q. There was some man there that was asking about a 58 day club meeting?

A. Yes, sir.

Q. Do you know who that was?

A. I didn't know his full name at the time. I have learned that it was a pipe fitter named Andy Stuart.

Q. What condition was he in?

A. He was feeling good.

Q. Feeling good?

A. Yes.

Q. Did anybody else have anything to say there?

A. This Kennedy started to say something, and I asked him to speak out loud, I wanted to hear what he had to say. I knew he was an official with the Union, and I wanted to hear what he had to say. But all I heard him say was "I talked to Paschal."

Q. That's all you heard?

A. He seemed to get disturbed at this fellow there by him, he kept butting in the conversation, and I saw him leaving.

Q. Then Mr. Kennedy left, did he?

A. Yes, sir.

Q. While you were at the meeting was there any show of hands or any voting that you saw on any question?

A. There was not.

Q. Was there anybody in charge of the meeting so far as you could see?

A. No, sir, no one person seemed to take charge of it.

Q. How long did you stay there?

A. I would guess around 35 minutes, maybe 40.

Q. Did you then leave the meeting?

A. Yes, sir.

Q. What did you do after you left the meeting?

A. Mr. Thomas carried me home and—

Q. Were you in Mr. Thomas' car?

A. Yes, sir.

Q. Did you stay at home?

A. I did until around 8:00 o'clock.

Q. Then where did you go?

A. I went to the roundhouse.

Q. Is the roundhouse the one that is there near the Rex's place?

A. The washroom, yes, sir.

Q. About what time did you go into the roundhouse?

A. Oh, it was, it must have been around 8:15, I wouldn't think any later than 8:15.

Q. Did you see anyone when you went in?

A. After we got inside the entrance there I looked towards the turntable, and I saw a group of men down around the turntable. I couldn't identify any of them.

Q. Did you see anyone in the vicinity of where you were in the roundhouse?

A. After I got inside of the washroom, Mr. Jordan was in his little office. I could see him.

Q. Did you do anything while you were there?

A. I removed my clothes.

Q. You removed your clothes?

A. Yes, sir.

Q. Where did you remove your clothes from?

A. My locker.

Q. Then where did you go?

A. I came back outside and asked Mr. Thomas if he was ready to go, or I told him I was ready to go, and he was standing on the outside talking to this Engine Dispatcher. The Engine Dispatcher was still inside with his door open, and Mr. Thomas was standing on the steps in front of his office.

Q. Had Mr. Thomas gone into the premises there with you?

A. Yes, sir.

Q. Had he been with you all the time you were in there?

A. Yes, sir.

Q. Or had you all split up?

A. All the time except what few minutes I was in the washroom.

Q. Then did you leave the premises together?

A. Yes, sir.

Q. Where did you go then?

A. We came back around the south end of the building, and back across to the highway.

Q. Where did you go then, where was your destination?

A. Into the cafe.

Q. That is Rex's Cafe?

A. Yes, sir.

Q. How long did you stay there?

A. I spent the night there, in that vicinity.

Q. Spent the night at the Rex's Cafe?

A. At the cafe.

Q. Did you spend the night inside of the cafe or were you in just the general vicinity of the cafe?

A. Inside and outside, I walked across the highway there once, after I saw the place deserted, I crossed the highway, the railroad seemed to be deserted at th roundhouse.

Q. Were you down in the vicinity of Rex's where you could observe any indications of a work stoppage?

A. I sure was.

Q. What did you see that indicated that?

A. I saw the two roundhouse foremen come out, and assistant foreman, assistant roundhouse foreman, got in his automobile, he was driving, and Mr. Crow, the second shift roundhouse foreman was sitting beside him. They came out, up Vanderbult Road, coming towards Birmingham.

Maybe five or ten minutes later the Engine Dispatcher, Jordan, came across the highway and announced to the crowd, it seemed like, just announced to the body of the people out there that everybody had left but him, and he was gone too.

Q. Were there many men around Rex's Barbecue that evening?

A. That night?

Q. That night.

A. Yes, sir.

Q. Were most of them railroad men so far as you could tell?

A. Yes, sir.

Q. Did you spend any time there at—there has been mentioned a footbridge, something of that sort mentioned in some of the testimony. Did you spend any time at the footbridge there?

A. I didn't go to the footbridge, I walked across the highway. I don't imagine I got 5 feet from the highway, and looked inside after Jordan had come across and said what he did. I saw the roundhouse

foreman go by, saw the lights go off, and the place seemed to be deserted, and I walked over and looked to see if I could see anybody, seeing if I could see anything inside moving.

Q. How long did you stay there at that place?

A. Just a very short time.

Q. A short time?

A. I don't think over 30 minutes.

Q. Did you spend the night out at that footbridge?

A. No, sir.

Q. Do you know Mr. Sexton?

A. Yes, sir.

Q. Did you have any conversation with him at or about where that footbridge is located that evening?

A. I did not.

Q. You did not?

A. No, sir.

Q. Did you have any conversation with Mr. Sexton in which you related anything that occurred at the meeting at the Parker house?

A. No, sir.

Q. You did not?

A. No, sir.

Q. At that time were you a friend of Mr. Sexton?

A. Well, I never have—I don't reckon I have any enemies, but I never have mixed with him socially.

Q. You say you spent the night there at Rex's Barbecue?

A. Yes, sir.

Q. What time did you leave? Where did you go when you left?

A. I went home the next morning.

Q. That is on Monday morning?

A. Yes, sir.

Q. And did you do some sleeping?

A. On Monday morning? Yes, I went right to bed, right away.

Q. Just tell us what you did on Monday?

A. I stayed around home all day. How many hours I slept I couldn't recall, but I don't believe I left my home all day Monday.

Q. You don't believe you left your home on Monday?

A. Until that night.

Q. On Tuesday do you recall any assembly or meeting at Ed Weldon's house?

A. I don't know whether you would class it as a meeting or not. I went to his home.

Q. You went to Weldon's home?

A. Yes, sir.

Q. Do you know about what time you got there?

A. It was in the early part of the evening. It must have been right after noon.

Q. After lunch?

A. Yes, sir.

Q. When you got there did you see any one you knew?

A. Mr. Weldon and several of the boys. I believe Mr. Albert Walker, Engineer Walker was there.

Q. How long did you stay there?

A. Not over five minutes.

Q. You stayed there five minutes?

A. Yes, sir.

Q. And was there anything said or discussed that you recall while you were there?

A. Mr. Myrick, Fireman Myrick came after me to go to Mr. Weldon's home, he told me that there was a few of them up there, a few men at Mr. Weldon's home, and they were expecting a—

Mr. Simpson:
We object to any conversation between themselves.

The Court:
Sustained.

Q. In other words, you got there and then just didn't stay, is that right?
A. No, sir, I didn't stay, not over five minutes I don't think.
Q. Where did you go after you left Mr. Weldon's home?
A. I rode from his home to my home with two men that were there, Mr. C. E. Purkey, and Mr. Gray. That's the reason I left as soon as I did, they passed my home going to their home in their car, and I knew I could ride with them.
Q. Did you stay at your home the rest of the day?
A. Tuesday? I believe I was served a subpoena or two in the evening.
Q. You did what?
A. Served a subpoena, and I carried it over to Mr. Otts house that night. I wanted to get his advice on me getting a lawyer.
Q. Was that the subpoena in this case here?
A. Yes, sir.
Q. And did you do anything else that day that you recall, or go anywhere else?
A. That is Tuesday?
Q. Yes, sir.
A. I don't believe I did.
Q. You don't think you did?
A. I spent the night at home.
Q. How about Wednesday, what did you do on Wednesday?

A. I carried the subpoena down to the cafe, Rex's Cafe, to see if any of the others, the men that were involved in this suit, that was named on my subpoena with me, Defendants, were there. I wanted them to know.

Mr. Simpson:
We object to the undisclosed state of mind.

The Court:
Sustained.

Mr. Simpson:
The purpose.

The Court:
That is excluded, gentlemen.

Q. How long did you stay at Rex's that day?
A. I don't believe I was there over an hour.
Q. Where did you go after you left Rex's?
A. I went home. And then Mr. Kennedy called me and said he was coming, Mr. Pettus, was coming to your office, and wanted to know if I wanted to ride with him, to come with him. I told him yes. I believe it was right around 3:00 or maybe 4:00 o'clock. He came by my home and picked me up, and we came to your office.
Q. Was that the day that the work stoppage stopped, I mean they resumed work that day?
A. They resumed work that night.
Q. They resumed work that night?
A. Yes, sir.
Q. Did you work that night?

A. No, sir. I didn't have a job to go to that night.

Q. You did work some more for the L&N, did you not?

A. I went to work Thursday morning.

Q. You went to work Thursday morning?

A. Yes, sir.

Q. Now, what was the job classification that you had Thursday morning when you went to work?

A. I had placed myself on the Labor Extra Board, and the foreman, Hollingsworth, had assigned me to the first shift vacancy, three weeks vacation vacancy, as laborer.

Q. And did you work as a laborer?

A. Yes, sir.

Q. And were the duties you performed as laborer the same that you had done as a hostler helper?

Mr. Simpson:
We object to that.

A. No, sir.

Q. They were different?

The Court:
Overruled.

Q. What is that?

The Court:
Overruled.

Mr. Pettus:
Yes, sir.

Q. What was your answer?

The Court:
He said they were not.

A. Would you ask the question again, Mr. Pettus?
Q. I wanted to know whether your duties as laborer were the same duties that you had performed as a hostler helper.
A. They were not the same.
Q. They were not the same?
A. No, sir.
Q. Who was performing the hostler helper duties that you had previously done?

Mr. Simpson:
We object to that as immaterial to this case.

The Court:
Sustained.

Q. What had been your duties as a hostler helper?

Mr. Simpson:
We object to that as immaterial.

Mr. Gibson:
Repetitious.

The Court:
It is repetitious. I sustain the objection.

Mr. Pettus:
We except. We haven't had this witness who was involved as one of the hostler helpers. We offer to show by him what his duties were.

Q. While you were a laborer, or at any time after this work stoppage occurred, as a laborer did you at any time perform the same or substantially the same duties that you had performed as a hostler helper before the work stoppage?

Mr. Simpson:
We object to that as leading, and repetitious.

The Court:
I sustain the objection.

Mr. Pettus:
We except and offer to show that they were.

Q. Now, Mr. McCutcheon, did you commit any act of violence during this work stoppage?
A. No, sir, I did not.
Q. And did you instruct anybody else to commit any act of violence?
A. I did not.
Q. Did you intimidate any other employees of the L&N to keep them from working?
A. No, sir.
Q. Did you instruct anybody else to keep any employees of the L&N from working?
A. No, sir.
Q. Have you known of any acts of violence that occurred during this work stoppage?
A. I have not.
Q. You have not approved of any acts of violence that occurred?

Mr. Simpson:
We object to that, state of mind.

Q. During the work stoppage?

The Court:
Sustained.

Q. Mr. McCutcheon, did you perform services as a laborer around the roundhouse?
A. I was assigned, after my job was abolished, I was assigned to go to the roundhouse at one time and work a vacancy.
Q. What did you do there?

Mr. Simpson:
We object to that.

A. I performed the same—

The Court:
I overrule the objection.

A. I performed the same duties that I always had performed for years as an outside hostler helper there at the roundhouse, working as a laborer at the labor rate of pay, only I was not allowed to go with the hostler, outside hostler, from the roundhouse to the Yard, or to Birmingham, or anywhere he is supposed to go. He left by himself from the roundhouse.

Mr. Pettus:
That's all.

Cross Examination.

By Mr. Gibson:
Q. Of course, the hostler picked up a herder as soon as he got out of the roundhouse area, didn't he?

A. After he got up in the Yard, near the Yard Office.

Q. Yes, sir.

A. Where the lead is.

Q. Now, you have been here throughout the trial, have you not?

A. Yes, sir.

Q. You heard Mr. Sexton testify that he observed you picketing at the footbridge across from Rex's about 11:00 o'clock Sunday night?

A. I heard him.

Q. And you heard R. E. Thomas testify?

Mr. Pettus:

We object to repeating all of the testimony. If he has any questions, all right, but just repeating the testimony we object to.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. You heard R. E. Thomas testify that he saw you at that place at 9:40 on Sunday night?

A. Yes, sir.

Q. You tell the jury that both of those statements were untrue?

A. Them men were mistaken.

Q. You were not there?

A. No, sir.

Q. Now, you spent the entire night at Rex's Barbecue Sunday night, didn't you?

A. Inside and outside, yes, sir, there around the building.

Q. Do you do that pretty regularly?

A. No, sir.

Q. What was your business at Rex's Barbecue all night Sunday night?

A. Curiosity.

Q. When this was going on?

A. Curiosity.

Q. Curiosity?

A. Yes, sir.

Q. Tell the jury what you did that night to satisfy that curiosity?

A. I stayed there and watched, observed everything that was going on that I could see.

Q. In Rex's Barbecue?

A. In the front. Its just like looking from here a few feet across the highway, to the railroad property.

Q. What were you curious about?

A. Well, its big news when the Railroad shuts down and the place is deserted that employs hundreds of men. That is something to observe.

Q. You wanted to find out what caused it, didn't you?

A. I didn't feel like I caused it.

Q. Now, answer the question, please, sir. You wanted to find out what the thing was all about, didn't you?

A. I wouldn't think so.

Q. Sir?

A. I wouldn't think so.

Q. Well, what were you curious about, tell us? Tell us what you were curious about, Mr. McCutcheon.

A. I was curious about the people leaving their jobs.

Q. About the reason they left?

A. Sir?

Q. About the reason they left.

A. That among—why they were not--why they had left, yes, sir.

Q. You told us you went over into the Yard about 8:15 Sunday night?

A. Yes, sir. I didn't say in the Yard, I said over in the roundhouse, washhouse.

Q. When I use the term "Yard" I mean the Boyles premises. You were inside the Company property that night?

A. Yes, sir.

Q. About 8:15?

A. Yes, sir.

Q. And your purpose in going over there was to get a bundle of clothes out of your locker?

A. I was moving, I was laid off that night and I was moving my location of work Monday morning.

Q. You had known for some time that you would be laid off that night?

A. After the bulletin was posted.

Q. Several days?

A. Yes, sir, on Wednesday or Thursday, I am not sure, prior to Sunday.

Q. And you had been in the washroom around about 3:00 o'clock that same afternoon?

A. Yes, sir.

Q. Sunday afternoon?

A. I went over there Sunday afternoon, yes, sir.

Q. You didn't go over there after your clothes until after the meeting at Shorty Parker's house, you and Reese Thomas?

A. I got the clothes at 8:15 or 8:20 that night.

Q. With the work stoppage going on, you were scared to go in the Yard, weren't you?

A. I was what?

Q. You were scared to go in the Yard with a work stoppage going on, weren't you?

A. Its against my principles to work in a labor dispute. But it is just general knowledge to me that, to be afraid to participate in work in a labor dispute when it is going on.

Q. You would be afraid, wouldn't you, you would be afraid that somebody would physically harm you, wouldn't you?

A. It is possible.

Q. If you tried to work during a labor dispute?

A. That's possible, yes, sir.

Q. And you would be afraid somebody would injure your family if you tried to work during a labor dispute, wouldn't you?

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial.

The Court:

Sustained.

Q. You were afraid that some one would physically harm you or injure your family at that time?

Mr. Pettus:

We object to that.

Q. If you tried to go in and work, weren't you?

Mr. Pettus:
We object to that, incompetent, irrelevant and immaterial.

The Court:
Overruled.

Mr. Pettus:
It cails foi a mental operation. We except.

A. It would be possible.
Q. Sir?
A. It is possible.
Q. You have heard of things like that before, haven't you?

Mr. Pettus:
We object to that.

The Court:
I sustain the objection.

Mr. Gibson:
You can come down.

The Court:
You are excused. Come down.

(Witness excused.)

Mr Pettus:
Mr. J. M. Brown.

J. M. BROWN, JR., called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. J. M. Brown, Jr.

Q. Where do you live?

A. 124 South 68th Street.

Q. You are one of the Defendants in the case?

A. Yes, sir.

Q. And by whom are you employed?

A. L&N Railroad.

Q. What is your job?

A. Fireman.

Q. Fireman?

A. Yes, sir.

Q. Were you a fireman in October, 1955?

A. Yes, sir.

Q. Are you also qualified as an engineer?

A. Yes, sir.

Q. Are you a member of a labor organization?

A. Yes, sir.

Q. In October, 1955 were you?

A. Yes, sir.

Q. Well, what is the name of that organization?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. Did you hold an office in that organization in October, 1955?

A. Yes, sir.

Q. What office did you hold?

A. President.

Q. Now, did you attend this meeting at the Parker house?

A. Yes, sir.

Q. Who had first mentioned the meeting to you, if you recall?

A. I couldn't recall. It seems to me like I found out about it first Sunday afternoon when I went over to the roundhouse.

Q. You found out about it at the roundhouse?

A. Yes, sir.

Q. But you did attend the meeting?

A. Yes, sir.

Q. What was the subject of the meeting?

A. Well, it was, as I understood, it was to discuss the abolishment of the hostler helpers jobs.

Q. Did you take part in the discussion there of it?

A. Not too much.

Q. Did you have anything to say?

A. Yes, sir.

Q. What did you say at the meeting?

A. My prime purpose for going there was to see J. B. Otts.

Mr. Simpson:

We object to the purpose, an undisclosed state of mind.

The Court:

Sustained.

Q. You just have to say what you said there.

A. Well, to see Otts and ask him what had been done about that, the bulletin that had been posted.

Q. Did you ask Otts what had been done about it?

A Yes, sir.

Q. And did he make a reply?

A. Yes, sir, he said he had handled it with Mr. Paschal, and I believe that he had talked to Mr. Quiggins about it.

Q. Did you make any other statement at that meeting with regard to handling it with Mr. Quiggins?

A. No, sir. I asked him if he had talked with anyone else besides Mr. Quiggins, if he talked to Mr. Kirchner.

Q. What was his reply to that?

A. He said that he had discussed it with the officials, and that was as far as he had gone with it, as well as I understood then.

Q. Do you recall anything that any other of the men at the meeting said, Mr. Kennedy or Mr. Thomas or anyone?

A. No. I overheard Mr. Kennedy make a remark something about he had been in touch with Jake Paschal, and as I understand it, it was something about handling it through the proper channels. Now, his exact words, I couldn't say.

Q. Was there any discussion among the others along those lines, anything said in answer to Mr. Kennedy's remarks?

A. Well, not that I know. After I talked to Mr. Otts I wasn't too interested in what was going on right there at that part.

Q. Was there any show of hands on any question at the meeting that you observed?

A. I didn't see any.

Q. You didn't see any?

A. No.

Q. Was there any compilation of names for any purpose at the meeting?

A. No, there was some one handed me a piece of paper and a pencil and asked me to write a few names down for them.

Q. Do you know who that was?

A. No, I couldn't say.

Q. Do you know what you did with the paper after you finished with it?

A. No, sir, I handed it to some one. I don't recall who it was, I was talking to some one at the time, and I didn't pay too much attention to it.

Q. About what time was the meeting over, Mr. Brown?

A. I would say around 5:00 o'clock or a little after.

Q. What did you do after the meeting?

A. I went home.

Q. After the meeting was over, did you have a telephone conversation with any official of the Railroad?

A. Well, after I got home I thought I would take it on myself to—I hadn't had the question answered that I had asked at the meeting, the reason I didn't get an answer on it the one I didn't know yet, so I called Mr. Quiggins to ask him the reason for the abolishment of the hostler helpers jobs. I hadn't ever heard until that time why he had done it.

Q. Did you talk with Mr. Quiggins then?

A. Well, I assumed it was Mr. Quiggins. I called his phone, I looked in the phone book and got his address and phone number and called him up, and he said—he identified himself as Mr. Quiggins.

Q. What did he say?

A. Well, I asked him about it, and he says, well, he says 'Well, I'll tell you just how it stands." He says "I had"—some time before that, I don't recall how long, the Official Federal Inspector had been

there inspecting the locomotives, and he says "While he was here he complained so about the condition about the Diesels, the engines, that it had gotten to Louisville", and he had to do something about it, he had to make a change somewhere, and he told me he abolished those jobs and put laborers on them so that when the occasion came about that there was any movements to be made that the helper, it would be a laborer then, could wipe the engines off.

Q. About what time did that conversation take place with Mr. Quiggins, if you recall?

A. I think it was about 6:10 or 20, something like that.

Q. That was on the night of the work stoppage?

A. Yes, sir.

Q. Now, the laborers, however, they had performed a different job from the hostler helpers, didn't they?

A. You mean at the roundhouse?

Q. At the roundhouse, and the outside hostler helpers job was different from a laborer's job?

Mr. Gibson:
We object to that.

A. Well, they used laborers on the inside hostlers job.

The Court:
Overruled.

Mr. Gibson:
We except.

Q. And how did that differ from the outside hostler helper job?

A. Well, there was no difference, because the outside hostler helper worked the same as the inside hostler helper, within the roundhouse limits.

Q. Within the roundhouse limits?

A. Yes, sir.

Q. But when he got outside of the roundhouse limits, his job was different?

A. Well, the outside hostler helper used to go with the engine all the way to town or wherever he had to take them.

Q. Did the outside hostler helper have duties with regard to protection of the left side of the engine?

A. Well, I would say it was—

Mr. Simpson:
We object to that.

A. —practical for him to be looking out for that side.

The Court:
Overruled.

Mr. Simpson:
We except.

Q. Now, Mr. Brown, after your conversation with Mr. Quiggins on Sunday—I will ask you to identify Mr. Quiggins again. Who was he?

A. Sir?

Q. Who was Mr. Quiggins?

A. Master Mechanic.

Q. Master Mechanic at the Boyles Yard?

A. Yes, sir.

Q. After your conversation with him—did you have a conversation with him while you were at home?

A. With who?

Q. I mean the telephone conversation with Mr. Quiggins, were you at home when you called him?

A. Oh, yes, sir.

Q. After that did you stay at home or did you leave?

A. Well, I was there until—I couldn't say exactly what time. My wife and I went to a drive-in theater.

Q. Went to a drive-in theater?

A. Yes, sir.

Q. After you got through with the drive-in theater where did you go?

A. Well, we rode back over by Rex's Barbecue.

Q. Was your wife with you?

A. Yes, sir.

Q. How long did you stay there?

A. Oh, it wasn't too long, I imagine 15 or 20 minutes, as well as I recall.

Q. Then you left Rex's Barbecue, and where did you go?

A. Home.

Q. Now, Mr. Brown, on Monday, Tuesday, and Wednesday will you give us an account of what you did on those days?

A. I couldn't recall offhand, but I believe Mr. Dougherty said he saw me over by Rex's Monday morning. If he said so, its so. I was over there every day at some time, I wouldn't say exactly what time, I didn't keep a record of it.

Q. But you would visit Rex's during the day?

A. Some time during the day.

Q. Did you spend much time there?

A. Not too much, to see if I could report to work or not, and I would go back home. Maybe I would stay around and drink a cup of coffee or something.

Q. When did you go back to work?

A. I believe, as well as I remember, I reported back Friday morning.

Q. Friday morning?

A. Yes, sir.

Q. Now, during the days that the work stoppage was in effect were you paid for those days?

A. No, sir.

Q. And you didn't work during those days?

A. I didn't expect any.

Q. Did you yourself commit any act of violence or intimidation against any employee of the L&N?

A. No, sir.

Q. Did you authorize anybody else to commit any act of violence or intimidation against the employees of the L&N?

A. No, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Gibson:

Q. Mr. Brown, Mr. Thomas had something to say at the meeting at Shorty Parker's house, didn't he?

A. I don't recall that he did. Almost everybody did.

Q. Almost everybody did?

A. Yes, sir, at one time or another.

Q. Of course, you don't remember what anybody said except Kennedy?

A. No, I remember what Mr. Otts said.

Q. Did he address that to the meeting or to you?

A. No, it was to me personally.

Q. Did anybody address the meeting, gathered together as a group?

A. Well, almost everybody there just discussed among themselves. I don't say that there was a general taking over or anything like that.

Q. Well, part of the time they did discuss it in a group, didn't they?

A. Well, there was I guess three or four or five groups around there.

Q. I said part of the time they did, or almost all, discussed it together in a group, didn't they?

A. No, I couldn't say that.

Q. You remember giving your deposition down here, don't you, back here on November 18, 1955?

A. Yes, sir.

Q. Sir?

A. Yes, sir. —

Q. I will ask you whether or not at that time you were asked these questions and made these answers—

Mr. Pettus:

What page?

Mr. Gibson:

—which I will read. Page 17, bottom of the page:

"Q. Were you divided up in small groups in various parts of the room, discussing the matters you discussed, or were you generally gathered together as we are here?

"A. Well, a few were discussing it, not all in one group, they were at times.

'Q. And there were times when they were all what you might say discussing it?"

Do you recall that?

A. I guess I did at that time, yes, sir.

Q. Now, you were the President of the Local at that time?

A. Yes, sir.

Q. Did you get up and express your opinion to the members who had elected you as their President?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Now, you didn't lay off after the meeting, did you?

A. No, sir.

Q. You were on a call status, that's the kind of job you had?

A. Yes, sir, I worked the board, but I wasn't due to be called.

Q. You had no shift to report to?

A. No, sir, no regular shift.

Q. No regular assignment?

A. No, sir.

Q. Now, this list of names that you put down in the meeting, you wrote that on a piece of paper with a pencil, didn't you?

A. Yes, sir.

Q. You remember that?

A. Yes, sir.

Q. And you were where in the room, or in the garage with reference to the door then?

A. Well, I couldn't say. I believe I was standing by a post, as well as I remember.

Q. And there were men gathered around shile you were writing?

A. No, sir, there was only twc or three or maybe four at that time.

Q. Only two or three, maybe four?

A. Yes, sir.

Q. Who were they?

A. I couldn't say offhand. I was discussing something with several of them.

Q. I don't want you to testify anything offhand, Mr. Brown. We would like for you to tell us what your recollection is about it.

A. Well, I was talking to some one, and I think some one handed me a paper, a piece of paper or pencil, and in an offhand way says "Write these names down for me", and I didn't pay any attention to it, so far as the importance of it or anything like that.

Q. You can't tell us who handed you the paper?

A. No, sir, I was talking to these other fellows.

Q. You can't tell us who you gave the paper to when you finished with the names?

A. I didn't pay any attention to it.

Q You can't tell us the name of a single man you wrote on that piece of paper, can you?

A. No, sir, I don't recall that I can.

Q. When you left the meeting everybody there was in agreement about what they were going to do to help reestablish the hostler helpers jobs, weren't they, so far as you could tell?

A. I don't know whether they were all in agreement or not. I imagine that they were, so far as I knew.

Q. I call your attention to these questions and these answers from your deposition, in the pretrial deposition.

Mr. Pettus:
What page is that?

Mr. Gibson:
Page 20, bottom of the page:

"Q. Did you hear anyone discuss the question of whether the group should band itself together to assist these men to get their jobs back?
"A. Well, I don't know if you would say banded together. It was sort of agreed that we would do what we could to help reestablish the jobs.
"Q. And that you understood to take in everybody there?

"A. Well, not only there, but everybody outside too, the rest of the men.
"Q. You mean the rest of the firemen?
'A. The rest of the firemen."

Were those questions asked you and did you make those answers?

A. I imagine I did.
Q. Now, you knew that a strike in that stage of the situation which Otts had described to you, while it was being handled with the General Chairman, would be an illegal strike, didn't you, Mr. Brown?

Mr. Pettus:
We object to that, incompetent, irrelevant, and immaterial.

The Court:
Sustained.

Q. You knew the proper procedure?
A. Yes, sir.
Q. And you knew the improper procedure to handle a grievance?
A. Almost any way outside of the proper way would be improper.
Q. You knew the proper way was then being processed, didn't you?
A. Yes, sir.

Mr. Gibson:
You can come down. Come down.

Mr. Pettus:
Wait a minute. I have one further thing here.

Re-Direct Examination.

By Mr. Pettus:
Q. Mr. Brown, reading further at page 21 the question was asked you there:

"Q. Who is the first person who suggested the course of action?", and your answer was: "I don't know offhand, but I suggested it myself. I don't know whether I was the first one or not, of contacting local officials, and laying our cards on the table and telling them just how we felt about it, and if they could

see our point of view, maybe we could get them to go along with us and bear a little weight on Louisville."

A. Yes, sir.
Q. Did you also make that statement?
A. That was my intention.

Mr. Pettus:
All right, come down.

Re-Cross Examination.

By Mr. Gibson:
Q. You heard Mr. Anderson testify you were at that meeting at Ed Weldon's Tuesday, didn't you?
A. Yes, sir.
Q. That's correct, is it?
A. Yes, sir.
Q. All right, come down.
A. May I, if the Court please, the question of Mr. Weldon's meeting came up there. I—

Mr. Gibson:
Now, Your Honor, we object to the witness making a voluntary statement.

Mr. Pettus:
I will ask him.

Re-Direct Examination.

By Mr. Pettus:
Q. What occurred at Ed Weldon's meeting, if you were there?

A. Well, I felt that that ought to be answered because it has been brought up. I was there, and I said that, at the time before when you questioned me, that I didn't remember being every place I had been. Well, It hadn't crossed my mind until I heard it here in the Courtroom that I had been there. I hadn't even thought about it again.

Q. Do you know what occurred at Ed Weldon's meeting?

A. Yes, sir, as well as I observed, Mr. Weldon had some of us there to sort of get in touch with the hotel—

Mr. Simpson:
We object to the purpose.

A. —to get the men back to work.

The Court:
I sustain the objection.

Mr. Simpson:
And we move to exclude that.

The Court:
It is excluded, gentlemen. All right, you can come down, Mr. Brown.

(Witness excused.)

Mr. Pettus:
Your Honor at this time we want to offer the questions and answers to certain interrogatories that we propounded to the Plaintiff, and I will get Mr. Byrd to read the questions, and I will read the answers.

Mr. Simpson:
We object to anything less than all going in, may it please the Court.

Mr. Pettus:
What is that?

Mr. Simpson:
We object to less than all going in.

The Court:
If he is offering them, of course, you can offer—

Mr. Pettus:
You can offer them in whole or in part, just like a deposition, may it please the Court. I mean it is part of the rule, the same rule applies to a deposition.

The Court:
They are entitled to offer them all if you offer part of them, I understand.

Mr. Pettus:
We don't concede that, Your Honor, but I mean we are going to offer this part of them.

Mr. Simpson:
We would like to offer the whole.

Mr. Smith:
What part of the rule says that, if you don't mind my asking?

The Court:
These are interrogatories.

Mr. Simpson:
I think we might get this clear.

Mr. Gibson:
We object to particular parts, we object to offering just parts.

The Court:
All right.

Mr. Pettus:
I want 1-C with reference to J. M. Brown, Jr.

"1. State fully and in detail with respect to the Defendant J. M. Brown, Jr.:

"(c) Did said Defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the Plaintiff not to perform their duties for the Plaintiff?"

"1(c) Plaintiff is not able to answer this interrogatory categorically at this time. Individually, personally and directly, this particular Defendant is not now known to have used any threats of force or violence. The means used by this Defendant was that of participating in the act of calling a strike, in the course of which persons aiding and abetting him and his co-conspirators ordered employees to leave and remain away from their work, using the fear and threat of violence created by previous terrorism, as well as direct threats and overt acts of violence.

"3(a) Did the said Defendant, J. M. Brown, Jr., personally participate in or commit any act of violence in connection with 'total cessation of Plaintiff's operation' as alleged in the amended complaint?"

"3(a) So far as Plaintiff now knows, this Defendant did not individually commit any act of violence, but planned and agreed with others that they would stop the Plaintiff's business from operating, and in the course of carrying out this plan and agreement acts of violence were committed by the co-conspirators of this Defendant and others acting in concert with him.

"4. State fully and in detail with respect to the Defendant, J. B. Otts, Jr.: (c) Did said Defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the Plaintiff not to perform their duties for the Plaintiff?"

"4(c) Plaintiff does not at this time know of any personal or individual threats or violence which J. B. Otts, Jr. committed, except such as were implicit in his presence at the Boyles Yard on the night of October 23, 1955, with a large group of persons gathered at and around the entrances to the Yard, engaged in halting the work of Plaintiff's employees, causing them to leave its premises and preventing others from going into its premises to work."

"9(a) Did the said Defendant, H. K. Parker, personally participate in or commit any act of violence in connection with 'total cessation of Plaintiff's operation' as alleged in the amended complaint?

"9(a) In so far as this interrogatory relates to the individual and personal acts of this Defendant as distinguished from those of his co-conspirators and those abetting him and them, Plaintiff can at this time only state that Parker participated in the actual stopping of work at Boyles on October 23, 1955, and thereafter assisted pickets by his presence at or about an entrance to Plaintiff's property on at least two other nights during the strike or work stoppage, as above stated."

"(b) If so, then state the time, date and place and the names and addresses of persons present, the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said Defendant."

"9(b) As before stated, the intimidation exercised by Parker and others affected and involved, and effectively prevented some 2,000 persons, members of all crafts as well as officials of Plaintiff, from carrying out their duties for a period of approximately three days and three nights. No individual was directl subjected to physical violence at the hands of H. K. Parker so far as Plaintiff is presently able to state."

"12(a) Did the said Defendant, C. L. McCutcheon, personally participate in or commit any act of violence in connection with 'total cessation of Plaintiff's operation' as alleged in the amended complaint?"

"12(a) So far as Plaintiff presently knows, this Defendant did not individually or directly participate in any act of violence during the period covered by the

stoppage of its business, but assisted in informing employees that a strike was in progress, and participated in picketing during the period of the 'wildcat' strike, in the carrying out of which acts of violence were committed and threats voiced by co-conspirators, named agents and abettors of this Defendant, and the other conspirators."

"15(a) Did the said Defendant, W. L. Grissom, personally participate in or commit any act of violence in connection with 'total cessation of Plaintiff's operation' as alleged in the amended complaint?"

"15(a) So far as Plaintiff presently knows, this Defendant did not individually or directly participate in any act of violence, but assisted in informing employees that a strike was in progress, and participated in picketing and watching during the period of the 'wildcat' strike, in the carrying out of which strike acts of violence were committed by co-conspirators, agents and abettors of this Defendant."

"21(a) Did the said Defendant, H. E. Southerland, personally participate in or commit any act of violence in connection with the 'total cessation of Plaintiff's operation' as alleged in the amended complaint?"

"21(a) So far as Plaintiff presently knows this Defendant did not directly and as an individual commit any act of violence, but was a member of the group which formed and carried out the conspiracy, was present with the crowd when the employees at Boyles were caused to leave their jobs on Sunday, October 23, 1955, at the beginning of the shutdown of Plain-

tiff's business, in the course of which co-conspirators, agents and abettors of this Defendant carried out acts of violence and other intimidating conduct as described above."

"24(a) Did the said Defendant, M. L. Hall, personally participate in or commit any act of violence in connection with 'total cessation' of Plaintiff's operation' as alleged in the amended complaint?"

"24(a) So far as Plaintiff presently knows, M. L. Hall did not, as an individual, personally commit any act of violence but he assisted the other conspirators in causing other employees to leave their jobs and to remain away from them throughout the period of the 'wildcat' strike caused by them, and in the progress of the same various acts of violence were committed and threats of violence made by co-conspirators, agents and abettors of this Defendant and the other conspirators named."

"27(a) Did the said Defendant, R. A. Sutterlin, personally participate in or commit any act of violence in connection with 'total cessation of Plaintiff's operation' as alleged in the amended complaint?"

"27(a) So far as Plaintiff knows at this time he did not personally and individually commit or participate in any act of violence. At the present time, Plaintiff is not sufficiently informed to give a categorical answer to this interrogatory, being only informed that this Defendant was a member of the group which met at H. K. Parker's home and thereafter failed to work during the period of the strike."

Mr. Pettus:

Now we offer those interrogatories that we have read.

Mr. Simpson:

We think they all should go before the jury. We offer all the rest, Your Honor.

Mr. Pettus:

We object to all the rest, may it please the Court, as incompetent, irrelevant, and immaterial, self-serving declarations.

The Court:

Let me have the rule there just a minute.

Rule 4 says where part of a deposition—and the same rule applies to interrogatories, under the rules, —if only part of the deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced; and any party may introduce any other parts.

So it appears that if you want to introduce any other parts of the interrogatories you are entitled to have them introduced.

Mr. Simpson:

We would like to introduce the whole interrogatories, that is all of the other parts, the parts that he didn't offer.

The Court:

All right, it will be admitted in evidence.

Mr. Pettus:

We object and except to the Court's ruling.

A Juror:

Are the answers he has given there a reply from the L&N Railroad?

The Court:

Yes. I didn't explain to you gentlemen, you have been hearing about depositions. Of course, that is where testimony of the party is taken.

Now, interrogatories are where, in advance of the trial, either party has a right to file questions, they call them interrogatories, to the other side, and those interrogatories are, or the answers to those interrogatories, can be offered in evidence by the party propounding them or asking the questions, or he can offer part of them.

But I have read you Rule 4, which says if he offers part, the other side can offer the other part.

Mr. Taylor:

If the Court please, I represent three parties in this case, and the interrogatories are not offered by those parties. I understand the parties referred to in these interrogatories,—Your Honor didn't mean to say the interrogatories referring to these three parties who didn't offer them—

The Court:

Were your parties referred to in the answers to the interrogatories?

Mr. Taylor:

I believe they were, but the interrogatories were not filed on behalf of my three parties, nor were the answers given in behalf of my three parties.

Mr. Simpson:
Questions were asked with respect to them.

The Court:
Who asked the questions?

Mr. Gibson:
Both counsel asked questions.

Mr. Pettus:
The Defendants I represent, Mr. Brown, Mr. Otts, Mr. Parker, Mr. Grissom, Mr. Weldon, Mr. Southerland, Mr. Hall, and Mr. Sutterlin, these are the Defendants I represented at that time, we propounded interrogatories to the Plaintiff.

The Court:
Were the answers given with respect to any of your clients? Hand me that sheet under there.

Mr. Pettus:
They were answered with respect to his clients.

Mr. Taylor:
Yes, that is correct, Your Honor, the answers that were given, some of them were given with reference to my clients, even though I did not propound the questions.

The Court:
You represent Letchman, Baum, and Thomas?

Mr. Taylor:
That's correct.

The Court:
Now, who propounded those interrogatories?

Mr. Pettis:
I did.

The Court:
Did you ask about those three Defendants?

Mr. Pettus:
I asked about everybody that is a Defendant in the case.

Mr. Gibson:
And there was no objection to the answers, that they were not responsive, Your Honor.

Mr. Smith:
Mr. Taylor never objected to the questions when Mr. Pettus propounded them.

The Court:
Well, that's right, they were not objected to at the time. I think the objection comes too late.

Mr. Taylor:
I am objecting to what they offer, not what Mr. Pettus has read. I wasn't in position to object to those. I object to them being offered in the trial of the case. I didn't propound the questions, and I didn't offer them in evidence.

The Court:
Well, they are in. Now with respect to these three men that Mr. Taylor represents, of course, if those

interrogatories were propounded by some one that did not represent them at the time, I don't think it would be binding on these three Defendants.

Mr. Simpson:

It seems to me Your Honor it would be like this, if I am in a lawsuit and other people are involved in the same lawsuit, although I don't represent all of them, I can ask what the other folks did, whether they are in the lawsuit or not, I can ask what bystanders did, and it would be the duty of the person that the questions were asked of to respond to that.

The Court:

Well, gentlemen, Mr. Taylor objects to the interrogatories, the portions or parts that you offered, as being applicable to his three clients.

Mr. Pettus:

Yes, sir.

The Court:

I am going to rule that they are not applicable, because he personally has not offered on behalf of his clients any part of the interrogatories.

Mr. Simpson:

I think that is fair, Your Honor.

The Court:

So gentlemen you will not consider the remaining portions of the answers. Now they have not been read to you, and I don't know whether they will be or not, but Mr. Simpson has offered them, but you will not consider those with respect to the three Defendants

Thomas, Baum, and Letchman, because they did not offer any part of the interrogatories to begin with.

Is there anything further from the Defendants in this case?

Mr. Pettus:

Your Honor, we have subpoenaed some records, we subpoenaed them Monday morning, I thought the case would probably go over to then. If there is going to be any more evidence we would like the opportunity to offer that additional information that we have subpoenaed. We just ask the Court's indulgence if there is going to be any more evidence received, rebuttal or otherwise. It will just be formal evidence, and Your Honor will rule on it, and it will either be admitted or not. It will not take long, in any event.

The Court:

Well, will there be some additional evidence?

Mr. Simpson:

Not as the evidence now stands.

Mr. Gibson:

I don't think so.

The Court:

We are not going to be able to finish the case, and I won't ask either party to close this afternoon, because you might want to tie up the odds and ends.

Mr. Taylor:

Right.

The Court:

Gentlemen, we are going to recess until 10:00 o'clock Monday morning. I am sorry we can't finish the case, but we can't keep you here over the week end and wear ourselves out and the Court out, and everybody else, to come back here on Saturday. And so, be back Monday morning.

I want to caution you particularly about talking to anybody about the case or among yourselves or with anybody, and don't let anybody approach you about it. It would be your duty to advise the Court, if anybody did.

So, be back Monday morning at 10:00 o'clock and we will finish the case Monday, if nothing happens.

(Whereupon, at 4:30 p. m. an adjournment was taken until 10:00 a. m., Monday, October 1, 1956.)

Monday, October 1, 1956,
10:00 A. M.

The Court:

All right, gentlemen, we are ready to proceed.

Mr. Taylor:

Call Mr. Davis, please.

TOMMY E. DAVIS, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Will you state your name, please, sir?

A. Tommy E. Davis.

Q. By whom are you employed, Mr. Davis?

A. L&N Railroad.

Q. Were you so employed by the L&N on October 23, 1955?

A. I was, sir.

Q. What was the nature of your employment at that time?

A. Hostler.

Q. Are you a member of any labor organization?

A. I beg your pardon, sir?

Q. Were you a member of any labor organization with the L&N at that time?

A. Firemen, yes, sir.

Q. Firemen's Organization?

A. Yes, sir.

Q. Now, Mr. Davis, do you recall the work stoppage that occurred last October?

A. Yes, sir.

Q. Please state to the jury and the Court, if you will, whether or not you worked on the Sunday on which that work stoppage occurred?

A. I went to work at 3:00 o'clock, sir.

Q. What time did you get off?

A. I went across the bridge at the engineers and firemen's washroom at 9:15.

Q. What was the occasion of your leaving Mr. Davis?

A. Every body else was leaving, and the lights was being turned off, and I left.

Q. Where were you on the Yard when you started out of the premises of the L&N on that date?

A. At the roundhouse.

Q. You were at the roundhouse?

A. Yes, sir.

Q. Do you know Mr. H. M. Baum?

A. I do, sir.

Q. How long have you known him?

A. Ever since I have been a fireman for the L&N he has—or ever since he has been a fireman with the L&N.

Q. Do you see him frequently?

A. Yes, sir.

Q. First, let me ask you this, did you go in the Yard office of the L&N Railroad on Sunday night, October 23?

A. I did not.

Q. Before you left there—excuse me?

A. I did not.

Q. Did you see Baum, Mr. H. M. Baum?

A. No, sir.

Q. On the premises of the L&N Railroad on Sunday night, October 23?

A. No, sir.

Q. Did you go in any building on the premises of the L&N Railroad on Sunday night, October 23, with a club or a stick in your hand?

A. I did not.

Q. Did you see Mr. Ben Mitchell on Sunday night, October 23?

A. I did not.

Q. Did you take any part at all in this work stoppage?

A. No, sir.

Q. And when did you next go back to work?

A. Well, I think they went back Wednesday night, if I am not too—and I didn't go back until Thursday.

Q. If Mr. Ben Mitchell says he saw you in the Yard office on Sunday night, is he correct in that statement?

Mr. Simpson:

We object to that.

The Court:

I sustain the objection.

Mr. Taylor:

I believe that's all. Now, you answer these gentlemen's questions, Mr. Davis.

Cross Examination.

By Mr. Simpson:

Q. You were in the Yard on the night this strike started, and went out at 9:15 you say?

A. Not in the Yard, at the roundhouse.

Q. The roundhouse is on the L&N premises?

A. It is a different place, and it is a different outfit. The Yard is the Yard, and the roundhouse is the roundhouse.

Q. They are both on the premises of the L&N Company?

A. Sure.

Q. Inside of the fence?

A. Yes, sir.

Q. All right, you were in there until 9:15 on that night the strike started?

A. That's right.

Q. And who did you go out with?

A. No one.

Q. Who did you walk out with?

A. No one.

Q. By yourself?

A. By myself.

Q. Had everybody else gone out ahead of you?

A. I don't know. I had to get my clothes. I went and got my clothes and left.

Q. Were you out in the Yard at the time people went through there hollering "Labor trouble, get out of here; clear the Yard"?

A. No, I wasn't. I imagine I was putting up the engine. That was my duty.

Q. When that business of cleaning out the Yard was going on, you were probably putting up an engine?

A. That's right.

Q. You took no part in the strike?

A. I did not.

Q. And you haven't been sued, have you?

A. No, I haven't.

Mr. Simpson:

All right, that's all.

Mr. Taylor:

May this witness be excused, Your Honor?

Mr. Simpson:

He can as far as we are concerned.

The Court:
You may be excused.

(Witness excused.)

L. O. PHILLIPS, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:
Q. Will you state your name?
A. L. O. Phillips.
Q. Where do you live?
A. At 221 Elder Street.
Q. You are going to have to speak out so everybody can hear you.
A. All right. 221 Elder Street, Birmingham.
Q. What do you do, Mr. Phillips?
A. Switchman.
Q. For the L&N Railroad?
A. For the L&N Railroad.
Q. Were you a switchman in October, 1955?
A. Yes, sir.
Q. Do you recall the night of Sunday, October 23, 1955, when the work stoppage occurred at Boyles?
A. Yes, sir, I do.
Q. Did you go on the Railroad Company property that night yourself?
A. Yes, sir, I did.
Q. At what time did you go on there?
A. Well, it was around five minutes of 11:00.
Q. About five minutes of 11:00?

A. Yes, sir.
Q. Where did you enter the property?
A. Well, we call it the cab track over there, going in the Yard.
Q. About how far is that from Rex's Barbecue?
A. I would say around 500 feet, maybe a little more or a little less.
Q. When you went on the property where did you go?
A. Went over to the shack, to work.
Q. Was it quiet in there?
A. Pardon me?
Q. Was it quiet.
A. Yes, it was quiet, there was nothing going on.
Q. How long did you stay there?
A. I was in there around 10 minutes I guess.
Q. Around 10 minutes?
A. Yes.
Q. All right.
A. A few minutes after the first time, nobody showed up and I left.
Q. When nobody showed up you left?
A. Yes, sir.
Q. Had anybody stopped you from going in?
A. No, I didn't see anyone.
Q. Did you see anyone inside there?
A. I saw some one, I don't remember just who it was, but I asked him what the trouble was. He said there was no work tonight.

Mr. Simpson:
We object to a conversation between him and some stranger, and move to exclude it.

The Court:
I sustain the objection.

Mr. Pettus:
We except.

The Court:
I exclude it, gentlemen.

Q. Did you leave then?
A. Yes, sir.
Q. Where did you go then?
A. Went home.
Q. You went home then?
A. Yes, sir.
Q. When did you go back to work, Mr. Phillips?
A. I don't remember just how long it lasted, but as soon as it was over, I found out that it was over, they were going back to work, I went back too.

Mr. Pettus:
All right. Answer their questions.

Cross Examination.

By Mr. Simpson:
Q. Mr. Phillips, where did you say you went on the L&N property that night?
A. Sir?
Q. The name of the entrance?
A. The cab track.
Q. I didn't catch it.
A. We call it the cab track.
Q. The cab track?
A. Yes, sir.

Q. All right.

A. That's what I call it, yes, sir.

Q. That's not the same as the two bridges there opposite Rex's?

A. No, sir.

Q. You didn't try to go in at the bridge right opposite Rex's, where the little footbridge is across there, or where the automobile bridge is across there?

A. No.

Q. Opposite Rex's, did you?

A. No, not the particular place there.

Q. Well, you saw people around those places, didn't you?

A. Well, there is always men out there around out there where they were.

Q. You saw men standing around there at the end of those bridges that night, didn't you?

A. Yes, sir.

Q. You went down nearly 200 yards away to what you call the cab path?

A. Yes, sir.

Q. That's not a very much used place, is it?

A. Well, there is two crews that use it.

Q. Two crews that use it?

A. Yes, sir.

Q. Now, the L&N Yards there at Boyles are about how long from end-to-end?

A. I would say about a mile or a mile and a quarter.

Q. About a mile or a mile and a quarter?

A. Yes, sir.

Q. About how wide at the widest point?

A. Maybe a quarter of a mile.

Q. About a quarter of a mile?

A. Yes, sir.

Q. On that night when that strike started there were lots of cars in there, weren't there?

A. Well, I don't recall a whole lot larger crowd gathered there than usual.

Q. I don't mean people, I am talking about cars in the Yard, railroad cars.

A. There is always a lot of cars.

Q. A lot of cars, filled with merchandise and property of various kinds?

A. There is always a lot of cars in there.

Q. Mr. Phillips did you go to any of the regular gates of entrance into the L&N property, to the roundhouse gate, to the Yard Office gate, Master Mechanic's gate, to the powerhouse gate, during the course of that strike?

A. No, sir.

Q. You didn't have anything to do with the strike, did you?

A. No, sir.

Mr. Simpson:
That's all.

Mr. Pettus:
Just one question.

Re-Direct Examination.

By Mr. Pettus:

Q. Mr. Phillips, you didn't try to go to any entry except the entrance where the cab track is, where you actually went in, did you?

A. That's the only one I went to.

Q. That's the only one you went to?

A. Yes, sir.

Q. And nobody stopped you from going in or coming out?

Mr. Simpson:

We object to that as repetition.

A. I went in and come out—

The Court:

Sustained.

A. —the same place.

Mr. Pettus:

That's enough. Thank you. Come down.

(Witness excused.)

JAMES WILLIAM JOHNSON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Will you state your full name, please, sir?

A. James William Johnson.

Q. You are going to have to speak up so all of these gentlemen can hear you.

A. James William Johnson.

Q. Are you employed on the L&N Railroad, Mr. Johnson?

A. Yes, sir.

Q. Were you also employed by the L&N Railroad Company back in October, of 1955?

A. Yes, sir.

Q. Are you sometimes referred to as "Jody"?

A. Yes, sir.

Q. By nickname?

A. That's right.

Q. Does your father also work for the L&N Railroad?

A. Yes, sir.

Q. Does he also have the same nickname of "Jody"?

A. Yes, sir.

Q. Do your friends oftentimes refer to you as "Little Jody"?

A. That's right, yes, sir.

Q. Now, Mr. Johnson, do you recall the work stoppage which occurred in October, of 1955?

A. Yes, sir.

Q. Do you recall whether or not you worked on the Sunday that that work stoppage occurred?

A. Yes, sir, I did.

Q. When, if you remember? Did you work that day or that night?

A. I was working that night, second shift.

Q. At what time would your duties normally terminate on the second shift of that Sunday night?

A. 11:00 o'clock.

Q. At 11:00 o'clock?

A. Yes, sir.

Q. Now, Mr. Johnson, where was your residence on October 23, 1955?

A. Decatur, that is my home. I was staying here with my daddy at that time.

Q. What time did you leave the L&N premises on Sunday night?

A. I think about 9:30.

Q. Did anybody tell you to leave or order you to leave?

A. No, sir.

Q. Were there other people leaving at about that time?

A. Yes, sir.

Q. Now, Mr. Johnson, where did you go when you left the premises of the L&N Railroad Sunday night?

A. Rex's Cafe.

Q. How long did you stay at Rex's?

A. Until about 11:00 or 11:30.

Q. Where did you go then, sir?

A. To Decatur.

Q. Were you at the Master Mechanic's gate of the Boyles Yard of the L&N Railroad in Birmingham, Alabama, in the vicinity of noon on Monday, the 24th of October?

A. No, sir, I was not.

Q. Do you know where you were at that time?

A. Decatur.

Q. Do you know Mr. Reese Thomas?

A. Yes, sir.

Q. Do you know Mr. Letchman?

A. Yes, sir.

Q. Do you know Mr. Ben Mitchell?

A. Just when I see him.

Q. You do know him by sight?

A. Yes, sir.

Q. Did you see Mr. Ben Mitchell Monday at or about 12:00 o'clock, October 24?

A. No, sir, I did not.

Q. Did you see Mr. Reese Thomas?

A. No, sir.

Q. Monday at about 12:00 o'clock, October 24?

A. No, sir.

Q. Or did you see Mr. Letchman at that time?

A. No, I did not.

Q. I believe you stated that,—or I will ask you if you know where you were at about noon on Monday?

Mr. Simpson:

I object to that, repetition.

A. I was at home in Decatur.

Mr. Taylor:

I wasn't sure that I recalled.

The Court:

Overruled.

Q. During the time that this work stoppage occurred did you belong to any labor organization?

A. Yes, sir.

Q. What was the organization you belonged to?

A. I belonged to the Engineers and Firemen.

Q. You belong to both the Engineers and Firemen?

A. Yes, sir.

Q. One further question, Mr. Johnson. Were you scared when you left the premises of the L&N Railroad on Sunday night?

A. Well, I wasn't scared, but I didn't want to get into anything.

Mr. Simpson:

We object to his argument. He has answered the question.

The Court:

I sustain the objection.

Q. Did you take any part in this work stoppage while it occurred?

A. No, sir, no, sir, I didn't.

Mr. Taylor:

I believe that's all. Now, answer these gentlemen's questions.

Cross Examination.

By Mr. Simpson:

Q. You say you were not at the Master Mechanic's gate when Mr. Ben Mitchell and Mr. Woelde went in to see about some livestock, perishables and livestock at about noon on Monday?

A. No, sir, I was not.

Q. Do you know who were in those two cars that were parked there, one on each side of that gate at that time?

A. No, sir, because I wasn't down there. I didn't see any cars, I wasn't there.

Q. You were not there?

A. No, sir.

Q. You know Mr. C. S. Hawkins, don't you?

A. Yes, sir.

Q. Do you know who the man was that was sitting in Mr. Hawkins car there talking to him at that gate at that time?

A. No, sir.

Q. That wasn't you?

A. No, sir.

Q. Do you have any idea who it was?

A. No, sir, I wasn't here, I didn't see.

Mr. Taylor:

Speak up, they didn't hear you when you said you weren't there.

Q. You do know Mr. Reese Thomas, and Mr. Barnett, and Mr. Hawkins were there?

A. No, sir, I don't know it.

Q. You don't know who the other man sitting in Mr. Hawkins car was as they were parked there, one on each side of that gate, about noon on Monday?

A. No, sir.

Q. If anybody mistook the man for you, then they were mistaken, were they?

A. Yes, sir.

Q. You had no part in this strike?

A. No, sir.

Mr. Simpson:

That's all. Come down.

Mr. Taylor:

May this witness be excused?

Mr. Simpson:

Yes, sir.

The Court:

This witness may be excused unless there is objection.

(Witness excused.)

C. F. WOELFLIN, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. C. F. Woelflin.

Q. Where do you live?

A. 314 Edgewood Boulevard, Homewood.

Q. What do you do?

A. Master Mechanic for the L&N Railroad.

Q. That is your position now?

A. Yes, sir.

Q. Now have you in answer to a subpoena brought the call book, that big book there (indicating)?

A Yes, sir.

Q. For October, 1955?

A. Yes, sir.

Q. Now turning to October 23—first, what is the call book? Just tell us what that is.

A. The call book is when the caller, engine caller at the roundhouse gets a call for a train, he is the caller at the Yard Office the engineer and fireman's name that are to go on that train, and the caller at the Yard Office calls them.

Q. Mr. Jordan, he is an Engine Dispatcher, isn't he, out there, L. P. Jordan?

A. He is cut off at the present time.

Q. In times past he has done that work?

A. He is an extra dispatcher.

Q. What is the last entry on the page for Sunday, October 23, 1955?

A. On Train No. 4, call was put out at 6:10 p. m. for 8:55 p. m.

Q. Are there any other calls on that book for that day?

A. No, sir.

Q. In other words, Train No. 4, is 8:55 the time the train was supposed to move?

A. Time of the train departure.

Q. The departure time of the train?

A. Yes.

Q. The last call for that train was 6:00 p. m.?

A. No, 6:10 p. m. is when they called the Engine Dispatcher out there and gave him the call.

Q. Gave him the call on that?

A. Yes, sir.

Mr. Pettus:

We offer that page of this book in evidence.

Mr. Gibson:

No objection.

Mr. Pettus:

Identified as Defendants' Exhibit No. 7.

(Defendants' Exhibit No. 7 was marked for identification.)

Q. As the Master Mechanic what general employees are under your supervision or jurisdiction?

A. The non-operating employees, and the engineer and firemen, so far as their promotion and anything pertaining to their work around the roundhouse. They come under the Yardmaster, otherwise.

Q. You have jurisdiction then of those employees?

A. Yes, sir.

Q. Are those hourly rate employees, that is their basis of pay, when they work an hour they get paid for that hour they work?

A. Yes, sir.

Q. What is your usual system of paying a man, suppose he gets to work, he comes to work today, how does he turn in his time?

A. He has regular assigned time cards with a number. He checks the time card in and out each day, and then that is sent to Louisville for recording.

Q. He turns that card in at the conclusion of his shift?

A. Yes, sir.

Q. Is that time punched?

A. Yes, sir.

Q. By a time clock?

A. The time he started, at 7:00 o'clock in the morning, or whatever time his shift starts, and then it is punched out when his shift is completed.

Q. And he has got to be on the job and making the time before he is entitled to turn in his time card, is that correct?

A. Yes, sir.

Q. In October, 1955, how many shop men were there at the Yard?

A. I couldn't say, I was not in Birmingham at that time.

Q. How many are there now?

A. I would say around 500.

Q. About 500 are there now?

A. Yes, sir.

Q. As a matter of fact, there were about 300 more at that time?

A. They have cut down operations there some since October.

Q. They have been cut down?

A. Operations have been cut down, I couldn't say how many.

Q. There are 500 there now?

A. Yes, sir.

Q. And there were more last October than there are now?

A. Yes, sir.

Mr. Pettus:

All right.

Mr. Simpson:

That's all. We don't care to ask him anything.

Mr. Pettus:

Just one thing.

Q. Did you succeed Mr. Quiggins?

A. Yes, sir.

Q. Was he the Master Mechanic that you succeeded?

A. Yes, sir.

Mr. Pettus:

Thank you. Come down.

(Witness excused.)

Mr. Pettus:

Mr. C. S. Black.

C. S. BLACK, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name, sir?

A. C. S. Black.

Q. What do you do?

A. Trainmaster at the L&N, at Boyles.

Q. Do you handle certain of the time records of some L&N employees?

A. Yes, sir.

Q. Are they under your supervision?

A. Yes, sir.

Q. What employees are under your supervision?

A. Yard clerks, Yardmasters, switchmen, firemen, and engineers.

Q. In answer to a subpoena have you got the time cards for October 23, 24, and 25, and 26, 1955?

A. Yes, sir.

Q. Let's see those, please, sir.

A. This is the Yard clerks, Yardmasters. That is from here to there (indicating), running through the 31st. Those dates are right there.

Q. Now taking this card just as an example here of P. B. Hilton on the 16th, does that mean October 16?

A. Yes, sir.

Q. Straight, an 8 under it, does that mean he worked 8 hours on that time?

A. That's right.

Q. That entry is made on other days there. Now October 24 there are three little X-marks. What does that mean?

A. The days that he didn't work.

Q. The days that he didn't work, and it shows in his case that he didn't work October 24, 25, and 26?

A. That's right.

Q. This record here applies to the clerks and Yardmasters?

A. Yes, sir.

Q. All right now, let's take one. Do they call them non-operating employees?

A. Yes, sir.

Q. Let's take an operating employee, one of these time cards here. What do you call these?

A. This is the engineer and firemen's duplicate time card.

Q. Duplicate time card?

A. We keep the carbon copy and send the original—

Q. Let's take just one as an example here. And that is turned in for what date?

A. That is for October 24.

Q. October 24, and that is turned in, the two gentlemen whose names appear there, H. T. Simrell and R. E. Thomas?

A. That's right.

Q. Will you describe the procedure by which they make up that card and turn it in?

A. At the completion of their shift they are supposed to make out a time card for their day's work. This happened on October 24, on which nobody worked. What he is asking for is a claim for that date.

Q. That is the way he makes his claim?

A. Yes, sir.

Q. If he had worked that day he would have been paid on the basis of this same kind of card, is that right?

A. That's right.

Q. Have you got the cards for October 23, 24, 25 for which claims have been made?

A. No, sir.

Q. You don't—

A. I've got the time card for the 23rd up to the time of the shutdown, in other words, I got it up to the second shift, not the third shift.

Q. You don't have it for the third shift?

A. I don't have those.

Q. And the cards from the third shift on the 23rd that you don't have, we asked for those in that subpoena, but you don't have those for the 23rd during the work stoppage, is that correct?

A. No, sir, I have them for the 26th and 27th.

Q. Then they resumed again, when they started work, do you have those cards?

A. Yes, sir.

Mr. Pettus:

That's all.

Mr. Simpson:

That's all.

(Witne[illegible]xcused.)

The Court:

Is there anything further?

Mr. Pettus:

On behalf of the Defendants that I represent, we rest.

Mr. Taylor:
I also rest for the Defendants I represent, Your Honor.

The Court:
Very well.

Mr. Gibson:
May Mr. Robey be excused? You had him under subpoena.

Mr. Pettus:
Yes, he can be excused.

Mr. Simpson:
We are not going to offer any rebuttal, Your Honor.

The Court:
All right.

Mr. Pettus:
I wanted to renew our motion that we filed.

The Court:
The Defendants and each of them filed a motion for a directed verdict, and the Court reserves ruling thereon. The Plaintiff also filed a motion for a directed verdict, and the same ruling is made with respect to the Plaintiff.

All right gentlemen, all the witnesses can be excused from the Rule.

The Court has indicated to the parties it will charge the jury with respect to Section 106, Title 29, United States Code annotated, and that in order to hold the Defendants or any one of them, either as conspira-

tors or individually, there must be clear proof of actual participation in, or actual authorization of such acts, or of ratification of such acts after actual knowledge thereof as provided in said Section 106.

Mr. Simpson:

The Plaintiff excepts to this ruling as to each of the Defendants, separately and severally.

And the Plaintiff now announces that in view of the Court's ruling it will at this time dismiss, in view of and by reason of the Court's ruling, it will now dismiss as to Defendants Southerland and Sutterlin.

The Court:

All right, Southerland and Sutterlin are dismissed as parties Defendant to the cause.

All right, you may proceed, Mr. Gibson.

(Thereupon, respective counsel argued to the jury, and at the conclusion of the argument the Court charged the jury as follows):

The Court:

Gentlemen, if you will give me your attention, I will undertake to instruct you as to the law applicable to the evidence and the issues in this case.

Now, in the trial of a lawsuit, of course, lawyers have certain functions to present their case, and the Court also has its function. And you gentlemen as jurors have your function.

The Court declares the rules of law applicable to the issues formed in the light of the testimony offered. The jury weighs the testimony and determines the facts proved and molded by the law as declared by the Court, and renders its verdict.

More specifically, the Supreme Court of the United States has said with respect to the jury's function, the very essence of the jury's function is to select from among conflicting inferences and conclusions that which it considers most reasonable. Fact finding does not require mathematical certainty. Jurors are supposed to reach their conclusions on the basis of common sense, common understanding and fair beliefs, grounded on evidence consisting of direct statements of witnesses, or proof of circumstances from which inferences can be fairly drawn.

You are jurors fairly chosen from different walks of life, and as such bring into the jury box a variety of different experiences, intuitions and habits.

Now gentlemen, keeping those functions in mind, the Court will more specifically instruct you with respect to the law in this case.

A person begins a lawsuit by filing a complaint. The complaint is the vehicle by which the action is made effective, or brought into Court, and that is what has been done in this case.

Now, the complaint itself is not evidence of the matters and things charged in the complaint. It is, as I have stated to you, merely the vehicle.

Now, the complaint in this case consists of one count. It is known as "Amended Count Three." And it reads as follows: It is a brief complaint.

"Plaintiff avers that on, to-wit, October 23, 1955, it was engaged in a lawful business, to-wit, that of a common carrier by rail in interstate commerce; and that on or about said date the Defendants, being employees of the Plaintiff, did conspire or combine to interfere with Plaintiff's said business, and pursuant to said conspiracy or combination did intentionally and without just cause interfere with and

prevent Plaintiff from carrying on said business, in that they caused other employees of the Plaintiff by means of intimidation or threats of force or violence not to perform their duties for the Plaintiff; and did thereby cause a substantially total cessation of Plaintiff's operation in Jefferson, Morgan and Montgomery Counties and other places on its lines in the State of Alabama. And as a proximate consequence thereof Plaintiff was injured and damaged in the amount of $250,000, which Plaintiff claims of the Defendants as damages in this cause."

Now gentlemen, the burden of proof is, of course, upon the Plaintiff to reasonably satisfy you of the material averments of this count of the complaint before it would be entitled to recover.

That is true because the Defendants and each of them filed in this cause an answer, and that answer is what is known as the general issue or general denial. And that general denial or general issue places the burden of proof upon the Plaintiff in this case.

Now gentlemen, the law, that is the basic or substantive law, that controls this case is the law of Alabama, except as modified by a provision of the Federal Statutes, found in what is known as the Norris-LaGuardia Act.

This railroad, as it has averred here, is engaged in nterstate commerce, and Congress, of course, has a right to control, or has a right to legislate with respect to instrumentalities of interstate commerce.

Now, the Section that I have reference to is Section 106 of Title 29 of the United States Code. And it reads as follows:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable in any Court of the United

States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in or actual authorization of such acts, or of ratification of such acts after actual knowledge thereof."

Now gentlemen, you keep that Statute in mind when I charge you with respect to a conspiracy.

Now gentlemen, in this complaint in this case it is averred that the Defendants did conspire or combine, that pursuant to said conspiracy or combination they did conspire and combine, and pursuant to said conspiracy or combination they did intentionally and without just cause, interfere with and prevent Plaintiff from carrying on said business, in that they caused other employees of Plaintiff by means of intimidation or threats of force or violence.

Now there are three things charged there that the Plaintiff says that they did some one or all of these. Now they would not have to prove all three of them because they are averred in the alternative. They said these Defendants were guilty of intimidation or threats of force or violence.

Now, of course, violence has a well-known significance and meaning to you. And so does threats of force. But the word ',intimidation" is used there, and it has a special legal significance which I will give to you:

"To consttute intimidation of employees by persons participating in a strike, it is not necessary that there should be any direct threat or actual violence, but it is sufficient if the attitude assumed is intimidaton."

Now, here is another definition:

"To intimidate is to inspire with fear, to overawe or make afraid. Fear may be inspired without

physical violence or spoken threats, and moral intimidation may be accomplished by a menacing attitude, and a display of force which may coerce the will as effectively as actual physical violence.

"Conduct of a strike may be such as to constitute intimidation, though there is no use of force or physical violence. Intimidation of workers by strikers may consist in numbers alone, without any actual violence."

I am not saying to you that is the case here, but I am saying to you that you may consider that matter in considering all of the evidence in this case, and in considering whether or not there was intimidation present as charged in this complaint.

Now gentlemen, it is averred also that the Defendants did conspire or combine to do these things which are charged in the complaint.

Now conspiracy has a particular significance in the law. And I will give you some of the rules with respect to it.

A civil conspiracy is defined generally as a combination between two or more persons to accomplish by concert an unlawful purpose, or to accomplish a purpose not in itself unlawful by unlawful means.

More specifically it is defined as a combination of two or more persons to do, one, something that is unlawful, oppressive or immoral; or, two, something that is not unlawful, oppressive or immoral, by unlawful means; or, three, something that is unlawful, oppressive or immoral by unlawful, oppressive or immoral means.

Now to constitute a conspiracy there must be a combination of two or more persons. One person cannot conspire with himself.

It is not necessary that all of the conspirators be parties Defendant to the suit. There must be a preconceived plan or unity of design and purpose. The mere fact that each of the several Defendants acted illegally with the same end in view does not constitute a conspiracy, unless such act was done pursuant to a mutual agreement.

And the mere knowledge, acquiescence or approval of the act without co-operation or agreement to cooperate is not enough to constitute one a party to a conspiracy. There must be intentional participation in the transaction with a view of the furtherance of the common design and purpose.

No formal agreement between the parties to do the act charged is necessary. It is sufficient that the minds of the parties meet understandingly, so as to bring about an agreement to do the acts, although such an agreement is not manifested by any formal words or by any written instrument.

It is not essential that each conspirator have knowledge of the details of the conspiracy, or the exact part to be performed by the other conspirators in the execution thereof. Nor is it necessary that the details be completely worked out in advance to bring a given act within the scope of the general plan.

The purpose need not be necessarily to commit a criminal act, but the purpose is unlawful when it is proposed wrongfully to violate some individual's right.

The results need not be specifically intended, or the means specifically agreed on.

To create liability there must have been an act done by one or more of the conspirators pursuant to the agreement, and in furtherance of the object. This is known as an overt act. An overt act is one that is

manifest, open, issuing in action, as distinguished from that which rests merely in intention or desgn.

Civil liability is conditioned upon actual damages actual damage resulting from something done by one or more of the conspirators in furtherance of the object of the conspiracy.

If a conspiracy is conceived and executed and a private injury results, the one so injured has a right of action against the conspirator.

The test for determining the lawfulness of the combination is the motive for combining, or the nature of the object to be attained as a consequence of the action.

Intention to do that which is calculated in the ordinary course of events to damage another in his property or trade will, when done without just cause or excuse, impose liability upon the wrongdoer.

Just cause or excuse exists only where the injury inflicted is the means to some end legitimately desired and incidental thereto, and is not the result of a specific intent and immediate purpose of the injury to others that benefit may ultimately come to the members of the combination.

It is entirely wanting,—that is just cause and excuse—when the immediate purpose of the combination is to inflict injury on others, and the benefit, if any, to result to the combination is indirect and remote.

An agreement entered into for the primary purpose of injuring another is not rendered legal by the fact that it may not incidentially benefit the parties.

As I have stated to you, no civil action lies for an unexecuted conspiracy. Yet whenever, in pursuance of an unlawful combination to injure another in his business, means have been employed which tend to

effectuate and to a greater or less extent did accomplish the object of the conspiracy, the conspirators are liable for the resulting injury and damage.

Whether or not a combination formed for injuring another in his business be lawful, so far as the purpose is concerned, if unlawful means are used effectuating that purpose, resulting in damages, those forming the combination will be liable for such damages.

Intention to do that which is calculated in the ordinary course of events to damage another, and which does in fact damage such other party in his property or trade, imposes a liability on the parties so acting, if they have acted without just cause or excuse.

If the object of a strike is lawful, and no unlawful means are employed in rendering it effective, the members of the striking combination will not be liable and subject to an award of damages.

As I have stated to you, before a party can be held liable as a conspirator, it must be proven to your reasonable satisfaction that he entered into an agreement with the other conspirators to accomplish the object of a conspiracy.

As I have also stated to you, such an agreement need not be formal or in writing.

And subject to the limitations of the Statute referred to as to actual participation in, or actual authorization of, or ratification of the act after knowledge, each conspirator is jointly and severally liable for all damages resulting from the conspiracy.

Any act done by any conspirator in furtherance of the common design, and in accordance with the general plan becomes the act of all. And each conspirator is responsible for such act.

And further, subject to the Statute referred to, every conspirator is liable for all overt acts illegally committed in pursuance of the conspiracy, and for the loss proximately resulting therefrom, whether he joined willingly or unwillingly in the furtherance of the common end.

If he actually authorized or actually ratified the overt act or acts after actual knowledge thereof, he would be liable, whether he was an actual participant or not, or whether he was actually present or not when the acts in pursuance of the conspiracy were committed.

A conspirator is none the less liable because he expected to derive no benefit from the wrong, or in fact received no benefit from it. However, he would not be liable for independent acts growing out of malice of particular individuals.

To render a person civilly liable for injuries resulting from the conspiracy of which he was a member it is not necessary that he should have joined the conspiracy at the time of its inception.

Subject to the Statute as to participation or authorization or ratification after knowledge, every one who enters into a common design is in law a party to every act previously or subsequently done by any of the others in pursuance of such design.

Now, a conspiracy may be established by circumstantial evidence. Usually it is susceptible of no other proof than that of circumstantial evidence.

A conspiracy, in and of itself, is not the ground or the essence of the charge, but it may be proved as aggravating the wrong of which complaint is made, enabling the Plaintiff to recover one action against all joint wrongdoers.

The gist or the essence of the action for a conspiracy is the damages, and not the conspiracy; and the damage must appear to have been the natural and proximate consequence of the Defendants' acts.

Where the Plaintiff failed in its proof of a conspiracy, such Plaintiff may yet recover damages against one or more of the Defendants shown to have been guilty of the wrong without such an agreement.

Now gentlemen, we are not here concerned with whether the layoff of the outside hostlers helpers was justified.

Plaintiff's right of recovery here, if it has such a right under the evidence, does not depend upon proof that the layoff was justified. We are not here concerned about the policy involved, or the wisdom of Plaintiff's course in abolishing the hostler helpers jobs, or whether those jobs should have been continued.

The evidence reveals that there is a regular grievance machinery set up for the adjustment of such complaints. And whether the outside hostler helpers will or will not be reinstated is of no concern to you.

Now if these Defendants here breached their contracts in calling a strike, if they did call the strike, or participating in the strike, that would not subject them to liability, because this is not a suit for the breach of contract.

The question is not whether the Defendants breached the Union contract with the Plaintiff by calling or participating in an unauthorized strike, if they so breached that contract. and did so participate in an unauthorized strike. But the question here is whether the Defendants, or some one or more of them, individually or in conspiracy, one with another, or with

another or others, though not a party to this suit, intentionally and without just cause, by means of intimidation or threats of force, or violence, interfered with and prevented the Plaintiff from carrying on its business, proximately resulting in damages to the Plaintiff.

If there was no such intimidation or threats of force or violence proximately resulting in damages to the Plaintiff, Plaintiff would not be entitled to recover.

If there was, under the circumstances recited, the Plaintiff would be entitled to recover against the Defendant or Defendants who used intimidation, threats of force or violence which proximately resulted in damages to the Plaintiff

Now gentlemen, the right to have and conduct a lawful business is a valuable property right, and a wrongful injury thereto, proximately resulting in damages, will subject the wrongdoer to liability for such damages.

Now, you have heard the evidence in this case. You have heard I believe 61 witnesses.

Now gentlemen, it is your duty to look to all of the material evidence in the case in order to determine what is the real and true state of facts. And you will weigh all the evidence in the case so as to reconcile all of the evidence where it may seem to conflict, or apparently conflict, if you can do so. You will not capriciously reject any evidence, but will reconcile all of it if you can do so.

If you cannot reconcile the testimony of the witnesses so as to make all of them speak the truth, then it is for you to say whom you are going to believe and whom you won't believe in the lawsuit.

And in determining the weight you will give to any witness' testimony, you may take into consideration any interest a witness may have in the result of the lawsuit; the demeanor of the witness on the witness stand, or any interest or bias the witness may show by his or her own testimony.

The jury are instructed that you may look, and it is your duty to look to the demeanor of the witnesses who testify, their opportunity to hear and see and to know as applied to the facts in the case, and to weigh the evidence and to give it all such weight and credence as you see fit and proper.

The oath of a juror has been taken by them to decide this case according to the evidence. They have no right to go outside of the evidence or to indulge in any views of their own upon the subject which find no warrant in the sworn evidence adduced before you.

While the jury cannot guess or surmise, the jury are entitled to draw all reasonable inferences from the facts in evidence.

Now gentlemen, if after considering all of the evidence in this case you are not reasonably satisfied from the evidence that the Plaintiff is entitled to recover against one or more of these Defendants, it would be your duty to return a verdict for all of the Defendants in this case.

If on the other hand you are reasonably satisfied that the Plaintiff is entitled to recover of one or more of these Defendants, then you would come to the question of damages in this case.

Now the Plaintiff has placed upon the board in this case their claim of damages. You have heard the evidence in that regard. The damages in this case are not punitive, they are compensatory. They claim

they lost money on account of cars that they had to reroute; that they had to pay rent on cars that they could not move off of their line; that they sustained loss because of cars that they were under legal obligation to accept which they could not accept; and that they lost profits.

Now you have heard the evidence in the case. You weigh the evidence. If you are reasonably satisfied from the evidence that the Plaintiff is entitled to recover, it would be entitled to recover the losses which they have reasonably sustained in this case.

Gentlemen, the weight of the evidence is for the jury, as is also the credibility of the witnesses in this case. As I have stated to you, you have heard a lot of witnesses who have given oral testimony. There is a lot of written evidence in the case, and you will consider that too.

Now in the course of this trial it has been necessary for the Court to make numerous rulings upon evidence and upon motions. And in making those rulings, the Court did not intend to indicate how he felt about it, how he felt about this case or how it should be decided. That is no concern of the Court. The only concern of the Court here is that justice be done between the litigants in this case. Every man and every corporation stands equal before the law, and is entitled to a fair trial.

Now it has been necessary that the Court exclude certain evidence from your consideration. When evidence is excluded from your consideration, gentlemen, it is not to be considered by you, and you will forget such evidence, exclude it from your minds.

Gentlemen, the verdict of the jury cannot be based upon sympathy or prejudice.

I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that any witness had willfully sworn corruptly and falsely to any material fact, you in your sound judgment may disregard such witness' testimony in its entirety.

Gentlemen, it takes all twelve of your number to arrive at a verdict. In other words, a verdict must be unanimous.

The Clerk has prepared for your convenience forms of verdict. After these forms of verdict there is a sheet giving the style of the case and the names of all the Defendants that are now before you.

Now if you find for the Plaintiff in this case the form of your verdict will be "We, the jury, find for the Plaintiff, Louisville & Nashville Railroad Company, and against the Defendants", and then there is a blank space for you to write in the name of the Defendants, "and assess its damages at blank dollars", one of your number signing as foreman.

Now, if there is anyone of the Defendants that you find in favor of, or if you find in favor of all of the Defendants, the form of your verdict in that case will be "We, the jury, find for the Defendant."

Now, there is a separate form of verdict for the Defendants. "We, the jury, find for the Defendant, J. M. Brown, Jr.", and H. M. Baum, and all of the Defendants that are left in the case,—a separate verdict as to each one of those.

All I have stated to you, if you find against any Defendant, you will write the name of the Defendant in this form of verdict in favor of the Plaintiff.

If you find in favor of anyone of the Defendants, you will return one of the separate verdicts in favor of the Defendant.

I think you will find it is not complicated after you have had a chance to consider these forms of verdict.

Now gentlemen, the Court has been requested to give at the instance of the Plaintiff the following written instructions, which are correct statements of the law, and which are to be taken by you in connection with the Court's oral charge as being consistent therewith, and not in conflict therewith.

(The Court read to the jury the charges given at the request of the Plaintiff.)

Now the Court has been requested to give at the instance of the Defendants the following charges which are correct statements of the law, and which are likewise to be taken in connection with the Court's oral charge as consistent therewith. These are in the interest of the Defendants.

(The charges given at the request of the Defendants were read.)

The Court:

Gentlemen, do we have the usual agreement as to the form of verdict?

Mr. Simpson:

Yes, sir.

Mr. Pettus:

Yes, sir.

The Court:

Are there any objections or exceptions to the Court's oral charge?

Mr. Pettus:

I have one, Your Honor. I want to except to that portion of the oral charge with regard to civil conspiracy and all that followed that, on the ground that that is inconsistent with Section 106 of the Norris-LaGuardia Act.

The Court:

I think I made the point that that entire charge or statement was modified by the—

Mr. Pettus:

I think Your Honor stated it was subject to that Act.

The Court:

I intended to do that. Is there anything further?

Mr. Simpson:

Yes, sir. For the Plaintiff we would like to except to that part of the charge in which the Court said that this case is governed by the law of Alabama, except as it may have been changed by Section 6 of the Norris-LaGuardia Act.

The Court:

That is the statute you have involved.

Mr. Simpson:

Yes, sir. Then we except to the Court's reading your statement to the jury—

The Court:

You get right down to the applicability of the statute.

Mr. Simpson:
That's what I want to raise, yes, sir.

The Court:
Is there anything else?

Mr. Simpson:
Secondly, to the subsequent references throughout your charge, where you said as modified by the law in respect to conspiracy.

Now then we would like to except to the giving of the charges,—we think the Court is in error in that respect,—where the Court charged this is not a question of whether Defendants breached their contract with the Plaintiff. Do you remember that part of the charge?

The Court:
Yes. The Alabama Supreme Court has held a mere breach of contract is not ground for conspiracy in the case. And you are not suing individually on breach of contract.

Mr. Simpson:
It is our opinion that that is a part of the whole conspiracy, and consequently the Court in excluding that from their consideration has limited it so materially—

The Court:
You notice I ruled that the fact that the justification of the dispute was not involved.

Mr. Simpson:
Now then we would like to except also to the giving of charge, I believe No. 10, for the Defendants. Have you got those charges?

The Court:
Charge 10 for the Defendants?

Mr. Simpson:
For the Defendants, yes, sir.

The Court:
Apparently I didn't give any charge 10.

Mr. Simpson:
I believe you did.

Mr. Gibson:
Your Honor made us a list of the charges given for the Defendants here on our copies.

The Court:
Yes.

Mr. Simpson:
This charge here.

The Court:
Which one is it? Let's see which one it is. Do yo have the charge?

Mr. Pettus:
That wasn't given.

The Court:
No, I didn't give charge 10.

Mr. Simpson:
You didn't give that?

The Court:
No.

Mr. Simpson:
Did you give charge 20?

The Court:
Yes, sir, I gave charge 20.

Mr. Simpaon:
I want to except to that on the ground it is argumentative, confusing and misleading, contrary to the constitution, contrary to the Railway Labor Act, contrary to the Norris-LaGuardia Act, contrary to the evidence, assumes the existence of certain facts not in evidence; and invades the province of the jury.
Now then did you give No. 27?

The Court:
I think it is an argumentative charge.

Mr. Simpson:
How about 27, did you give that?

The Court:
No, I didn't give 27.

Mr. Simpson:
Did you give 28?

The Court:
No, I didn't give 28. Let me see just a minute. I gave 26.

Mr. Simpson:
26 is the one of the same kind,—no, it isn't, either.

The Court:
It is one of that series.

Mr. Simpson:
Yes. We want to object to the giving of charge No. 26, and the others like it, separately and severally,—you remember there were fourteen of them—on the ground it is misleading and confusing.

The Court:
Are you referring to 26 now?

Mr. Simpson:
Yes, sir.

Mr. Gibson:
And all of those which are similar to it or identical with it, except as to the names of the parties.

Mr. Simpson:
26 and that series.

The Court:
That series consists of some fourteen charges.

Mr. Simpson:
That series consists of some fourteen charges, yes, sir, in which separately the names of each Defendant is used,—on the ground it is misleading and confusing, omits the hypothesis that all the alleged financial damages was not proximately caused by the acts charged; it is argumentative.

It is not hypothesized upon the reasonable satisfaction of the jury from the evidence that all damages were proximately caused by a strike of Plaintiff's employees carried on by force; contrary to the evidence; contrary to the Railway Labor Act; assumes the existence of facts in issue, and is contrary to the law of conspiracy.

It is tantamount to a charge that there is no conspiracy in this case, we think. We except to it on that ground.

This charge D, you gave that, didn't you?

The Court:
D?

Mr. Simpson:
Yes, sir.

The Court:
Yes, I gave that.

Mr. Simpson:
We object to that on the ground it is not hypothesized upon the lawfulness of the strike itself, it is misleading, it is argumentative, and is in effect a charge that an act done in support of an illegal act if peaceful is lawful and not illegal; assumes an implication that the strike was legal, and is a charge on the effect of the evidence. I realize that this is a Federal Court, of course.

Let me see those. I think there are two others there that we have missed.

Mr. Taylor:

Can I state one while he is checking there? I want to except also on behalf of my clients to the definition of conspiracy as being inconsistent with Title 29, 106 U. S. Code, that Your Honor read. That's all I have.

Mr. Simpson:

We except to the giving of charge C, because it is abstract, argumentative, assumes facts which are not in evidence, and is contrary to the Railway Labor Act, and contrary to the Norris-LaGuardia Act, and the charge is on the effect of the evidence.

We except to the giving of charge No. 24, on all of the grounds assigned to the objection to charge 26. That is the same in effect.

We except to 25. We except to the giving of charge 25, on the ground assigned as objection to the giving of charge No. 26, and that series of charges.

We except to charge 23. We except to that on all the grounds assigned as objection to the giving of charge No. 26. And we object as to each of the fourteen separate Defendants, separately and severally.

The Court:

Gentlemen, you will now retire and consider your verdict in this case.

(The jury thereupon retired and at 5:00 o'clock p. m. were excused until 9:00 o'clock on Tuesday, October 2, 1956.)

Tuesday, October 2, 1956,
9:00 A. M.

(The jury deliberated until 3:55 p. m., at which time the Court instructed the jury further as follows):

The Court:

Gentlemen, you have been out a considerable time now. You have not asked for further instructions, but in view of the lapse of time the Court is going to give you this further instruction. I hope you will listen carefully.

One mode provided by our constitution and laws for deciding questions of fact is by the verdict of a jury. In a large number of cases, and perhaps strictly speaking in all cases, absolute certainty cannot be attained or expected.

Now this is an important case. The trial has been long and expensive. Your failure to agree upon a verdict will necessitate another trial equally as expensive.

The Court is of the opinion that the case cannot be again tried better or more extensively than it has een presented, on either side. It is therefore very desirable that you should agree upon a verdict, if this is possible.

The Court does not desire that any juror shall surrender his conscientious convictions. On the other hand, each juror should perform his duty conscientiously and honestly, according to the law and the evidence, and although the verdict to which a juror agrees must, of course, be his own verdict, the result of his own convictions, and not a mere acquiescence in the conclusion of his fellws, yet in order

to bring twelve minds to a unanimous result you must examine the questions submitted to you with candor, and with a proper regard and deference to the opinions of each other.

You should consider that the case must at some time be decided; that you are selected in the same manner and from the same source from which any future jury must be. And there is no reason to suppose that the case will ever be submitted to twelve men more intelligent, more impartial, or more competent to decide it, or that more or clearer evidence will be produced on one side or the other.

In conferring together you ought to pay proper respect to each other's opinions, with a disposition to be convinced by each other's arguments.

And on the one hand, if much the larger number of your panel are for a particular party or side, a dissenting juror should consider whether a doubt in his own mind is a reasonable one which makes no impression upon the minds of so many men, equally honest, equally intelligent as himself, who have heard the same evidence, with the same information, with an equal desire to arrive at the truth, and under the sanction of the same oath.

But on the other hand if a majority are for the other party or side, the minority ought to seriously ask themselves whether they may not reasonably and ought not to doubt the correctness of the judgment which is not concurred in by most of those with whom they are associated and destroys the weight sufficiently of that evidence which fails to carry conviction to the minds of their fellows.

I just wanted to give you that further charge. I have given you the charge on the law in this case as applicable to the evidence in the case, and I want

you gentlemen to again retire and see if you cannot arrive at a verdict in this case.

Is there any objection to the charge?

Mr. Simpson:
No, sir.

Mr. Pettus:
No, sir, Your Honor.

Mr. Taylor:
No, sir.

(Thereupon, at 4:00 p. m. the jury again retired to consider its verdict, and at 4:15 p. m. returned with a verdict in favor of each Defendant.)

DEFT. EX. 1.

Louisville and Nashville Railroad Co.
Office of Master Mechanic
Bulletin #135

Boyles, Ala., Oct. 19, 1955.

S&NA Division

All Outside Hostler Helpers:

The following Outside Hostler Helpers' positions will be abolished at end of shift Sunday, Oct. 23, 1955:

Ed. Dorrity—Seniority Date 8-27-22, Second Shift

W. L. Grissom—Seniority Date 9-30-25, First Shift

C. L. McCutchen—Seniority Date 7-31-41, Third Shift

J. B. QUIGGINS, M.M.

JBQ—ewb
Cy—Mr. Ed. Dorrity
Mr. W. L. Grissom
Mr. C. L. McCutchen
Mr. J. B. Otts, L. C
All Roundhouse Foremen

DEFT EX. 3.

Master Mechanic, Boyles, Ala., October 18, 1955.
Desk A • • •

Mr. B. M. Mitchell:—

We have been instructed to abolish all outside hostler helper jobs at Boyles roundhouse. It is understood, of course, that the herder will protect the locomotive from the switch at the roundhouse track when any outside moves are made.

In our recent conversation it was understood that as many outside moves as possible would be eliminated, and when it became necessary to swap locomotives account of inspection, or account defects, the engine crew would take the engine to the roundhouse to make the swap.

I find nothing in the agreement that could be construed as justifying a claim for such moves

Your co-operation in this matter will be very much appreciated.

J. B. QUIGGINS, M.M.

jbq/e.
cc. Mr. J. R. Parsons,
Mr. L. I. Mulvaney.

DEFT. EX. 6

Brotherhood of Locomotive Firemen and Enginemen
General Grievance Committee
Louisville and Nashville R R.
Louisville 2, Kentucky

Jake Paschall, Gen'l Chairman
404-5 Hoffman Building

M. B. Cunningham, Senior Vice-Chairman
D. W. Copeland, Sr., Junior Vice-Chairman
H. T. Turner, Secretary-Treasurer

Representing Lodges Nos. 55, 218, 390, 503, 578, 612, 689, 816, 833, 861, 862, 864, 865, 866, 867, 878, 937, 955, 960.

Please Refer to File: 937-Open.

October 20, 1955

Mr. W. S. Scholl, Director of Personnel,
Louisville & Nashville Railroad Company,
908 W. Broadway,
Louisville 1, Kentucky

Dear Sir:

I am advised that the Master Mechanic at Birmingham, Alabama has posted bulletin notice abolishing three (3) hostler-helper jobs effective October 23, 1955. It seems there is no change in conditions nor reason to abolish these outside hostler-helper positions. As I understand it, their duties are to assist

the outside hostler in delivering engines, servicing engines, throwing switches etc.

We wish to protest the discontinuance of these outside hostler-helper jobs and to advise that in the event they are abolished we expect to make claim for each day these men are out of service.

It appears that it would be well to discuss the matter before the jobs are abolished, and will appreciate your advice as to when that might be done.

Please advise.

Yours very truly,
JAKE PASCHALL,
(Jake Paschall),
General Chairman.

JP:IED
Bld. Cy.: J. B. Otts, Jr. L.C.
G. E. Lloyd, R. S.

MOTION FOR DIRECTED VERDICT.

Fled Sept. 26, 1956.

(Title Omitted.)

Comes each defendant in the above styled cause, separately and severally, by their attorneys, and said defendants separately and severally, hereby move the Court to direct a verdict in favor of each defendant, separately and severally, and against the plaintiff, and as grounds of said motion, assign the following, separately and severally, to-wit:

1. Plaintiff has failed to prove the material averments of the complaint as amended.

2. Plaintiff has failed to prove by a preponderance of the evidence that said defendant did conspire or combine with other defendants or with any other person to inferfere with plaintiff's said business.

3. There is no evidence that any conspiracy or combination of plaintiff's employees did intentionally and without just cause interfere with and prevent plaintiff from carrying on said business.

4. There is no evidence that said defendant or other employees of plaintiff pursuant to a conspiracy or combination caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff.

5. There is no evidence that said defendant did conspire or combine with any other defendant or any other person as alleged in the complaint.

5a. Plaintiff has failed to prove any recoverable damage.

6. There is no evidence that said defendant caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff.

7. There is no evidence in this case that said defendant employed any violence as alleged in the complaint, and there is no evidence that said defendant was a member of any conspiracy or combination using violence as alleged in said complaint.

8. The evidence in this case shows without dispute that the cause of action sued on is an alleged labor dispute by and between plaintiff and its employees, and that said labor dispute is within the primary exclusive jurisdiction of the National Railroad Adjustment Board pursuant to the Railway Labor Act.

9. The undisputed evidence in this case shows that any cessation of plaintiff's business as alleged in the complaint was caused by a spontaneous walk out of plaintiff's employe s in exercise of their constitutional right under the State and Federal law to cease work.

10. The proof shows without dispute that the plaintiff has failed to exhaust the administrative remedies before the National Railway Adjustment Board.

11. The proof shows without dispute that there is no existing contract between plaintiff and any of the defendant employees of plaintiff prohibiting any strike or walk out or prohibiting any peaceful persuasion of any other employees of plaintiff to walk out.

12. The proof shows without dispute that the cause of action sued on is a labor dispute within the primary exclusive jurisdiction of the National Railroad Adjustment Board.

13. The undisputed evidence shows that the defendant employees of plaintiff have the right under the State and Federal law to cause a strike or walk out and that there is no existing contract or any provision of any existing contract limiting the right of the defendants or any of the defendants to engage in

or persuade others to engage in a peaceful strike or walk out.

14. Th proof fails to show that the defendants or any two or more of the defendants entered into any illegal conspiracy or combination against the plaintiff.

15. The undisputed evidence shows that the defendants collectively and severally and separately have not committed any actionable wrong against the plaintiff.

16. The proof shows without dispute that each individual defendant is free from the commission of any actionable wrong against the plaintiff.

17. The proof shows without dispute that the defendants collectively have not committed any actionable wrong against the plaintiff.

18. The evidence shows without dispute that the plaintiff caused a labor dispute with its employees by failing to give proper notice of the abolition of the jobs of hostler helpers as provided in the Railway Labor Act.

19. The evidence shows without dispute that the plaintiff has violated the terms of the collective bargaining agreement covering the hostler helpers by failing to give notice and in other respects as provided in said agreement preliminarly to the abolition of the craft of hostler helpers.

20. The evidence show without dispute that the plaintiff has hazarded the lives of some of its em-

ployees by abolishing the skill jobs of hostler helpers and substituting unskilled negro labor in the place of the skilled hostler helper.

21. The evidence shows without dispute that the controversy between the plaintiff and its employees, who are defendants, in this cause, is a labor dispute within the primary exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act.

22. Under the undisputed evidence said defendant is shown to be not bound by contract for a definite period and not by agreement freely made having given up any right to strike or participate in a work stoppage or to cause other employees to participate in a work stoppage had the right to strike or participate in a work stoppage or to cause other employees to participate in a work stoppage ad the undisputed evidence shows said defendant committed no unlawful act in so doing.

23. The undisputed evidence shows that said defendants being employees of the plaintiff had the right to strike or participate in a strike or to cause other employees of plaintiff to participate in any strike involving a labor dispute between plaintiff and any of its employees.

24. The undisputed evidence supports one or more of said defendants defenses to the complaint as last amended.

25. The undisputed evidence shows that said defendant committed no unlawful act against plaintiff or plaintiff's employees as alleged in the complaint.

26. The evidence shows that said defendant was a member of an association or organization participating or interested in a labor dispute and it is provided in Title 29, U.S.C.A. Sec. 106 that under such circumstances said defendant shall not be held responsible or liable in any Court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation or actual authorization of such acts or ratification of such acts after actual knowledge thereof.

27. There is no clear proof that said defendant participated in any unlawful acts.

28. There is no clear proof that said defendant actually authorized any unlawful acts.

29. There is no clear proof that said defendant ratified any unlawful acts after actual knowledge thereof.

30. There is no clear proof that any individual officer, member or agent of any association or organization, as provided in Title 29, USCA Sec. 106, committed any unlawful act.

31. Section 6 of the Norris-Laguardia, Title 29 USCA Sec. 106, reads as follows:

"No officer or member of any association or organization and no association or organization participating or interested in a labor dispute, shall be held responsble or liable in any Court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participa-

tion in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

and there is no legally admitted evidence in this case under the above quoted statute that said defendant is responsible or liable under the evidence for any claim made in the complaint.

32. The evidence affirmatively shows that said defendant had the right to strike by reason of an existence of a labor dispute between plaintiff and its employees.

33. The evidence affirmatively shows that said defendant exercised his constitutional right to strike by quitting the employment of plaintiff by reason of a labor dispute existing between plaintiff and its employees of whom said defendant was one.

34. The evidence affirmatively shows that said defendant did not interfere with plaintiff's business without just cause.

35. The evidence affirmatively shows that said defendant cannot be held liable or responsible in this case without imputing to said defendant the alleged unlawful acts of individual officers, members or agents of an association or organization contrary to Title 29, USCA Sec. 106.

36. There is no clear proof against said defendant of actual participation or actual authorization of the alleged unlawful acts of individual officers, members or agents of an association, nor of ratification by

said defendant of such alleged acts after actual knowledge thereof.

37. The evidence shows that said defendant was a member of an association or organization participating or interested in a labor dispute and it is provided in Title 29, USCA Sec. 106 that under such circumstances said defendant shall not be held responsible or liable in any Court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation or actual authorization of such acts or ratification of such acts after actual knowledge thereof, and there is no legally admitted evidence in this case that said defendant actually participated in or actually authorized any alleged unlawful acts of any individual officer, member or agent of any association or organization participating or interested in the labor dispute existing between plaintiff and its employees and there is no evidence that said defendant ratified any such alleged acts after actual knowledge thereof.

38. Under the undisputed evidence in the case said defendant had just cause for all acts committed by him under the evidence, under the agreement existing between the plaintiff and the association to which said defendant belonged.

39. Under the undisputed evidence in this case, said defendant had just cause for all acts committed by him under the evidence, under the agreement between the plaintiff and the Craft covering the conditions under which said defendant worked for plaintiff as an employee.

40. Under the undisputed evidence in the case, said defendant had just cause for all acts committed by him under the evidence, under the Railway Labor Act.

41. The evidence shows without dispute that said defendant had the right to cease rendering labor or services to plaintiff under the following provision of the Railway Labor Act, Title 45, Section 152, USCA:

"* * * providing, That nothing in this chapter shall be construed to require an individual employee to render labor or services without his consent nor shall nothing in this chapter be construed to make the quitting of his labor by an individual employee an illegal act."

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
FRANK O. BURGE, JR.,
(Frank O. Burge, Jr.),
R. MACEY TAYLOR,
(R. Macey Taylor),
Attorneys for Defendants.

MOTION FOR DIRECTED VERDICT.

Filed Oct. 1, 1956.

(Title Omitted.)

Comes the plaintiff and moves the Court to direct a verdict in its favor and against the defendants and each of them, separately and severally, in this cause

and for grounds assigns, separately and severally, the following:

1. Plaintiff has proved by substatnial evidence which is not disputed every element of its complaint.

2. Plaintiff has proved by undisputed substantial evidence every material allegation in the complaint.

3. There has been established by undisputed substantial evidence every element of plaintiff's case as set forth in the specification of issues in the Court's pre-trial order.

4. For that the evidence is insufficient to warrant a finding that any of the special defenses, of the defendants, has been established.

5. All of the acts of the defendants herein were done in furtherance of an illegal purpose.

6. Under the undisputed evidence, the strike at plaintiff's place of business from October 23 to October 26, 1955, was over the abolition of the outside hostler helper jobs and was illegal.

GIBSON & GIBSON,
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
Attorneys for Plaintiff.

DEFENDANTS' CHARGES GIVEN.

(Title Omitted.)

C. Gentlemen of the jury, I charge you that laborers possess the right to strike where their complaints are in good faith referable to wages, hours or other conditions of immediate employment.

Given.

GROOMS,
J.

D. Gentlemen of the jury, I charge you that the employees of an employer who are engaged in a strike or work stoppage against the employer may lawfully support the strike or work stoppage by peaceful picketing.

Given.

GROOMS,
J.

20. Gentlemen of the jury, I charge you that if you are reasonably satisfied from all of the evidence in the case that on or about October 23, 1955, the work stoppage or strike commenced by plaintiff's employees against plaintiff on account of the abolition of hostler helper jobs by plaintiff, then I charge you that the defendants, or any of the defendants, were guaranteed the right under the Constitution of the United States peacefully to picket the plaintiff.

Given.

GROOMS,
J.

23. If you are reasonably satisfied from all of the evidence in the case that defendant, J. M. Brown, Jr. at the time alleged in plaintiff's amended complaint was a member of an association or organization participatng or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

24. Gentlemen of the jury, I charge you that you canot find for the plaintiff and against any individual defendant unless you are reasonably satisfied from all the evidence that such individual defendant actually participated in an unlawful act or actually authorized an unlawful act or ratified an unlawful act after actual knowledge thereof.

Given.

GROOMS,
J.

25. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against any individual defendant unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or volence not to perform their duties with plaintiff, or ratifed the act of another who caused other employees of plantiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

26. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against J. M. Brown, Jr., unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

46. If you are reasonably satisfied from all of the evidence in the case that defendant J. B. Otts, Jr. at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintff after actual knowledge thereof.

Given.

GROOMS,
J.

47. If you are reasonably satisfied from all of the evidence in the case that defendant, A. R. Thomas at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge

you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintff after actual knowledge thereof.

Given.

GROOMS,
J.

48. If you are reasonably satisfied from all of the evidence in the case that defendant, J. M. Weldon, at the time alleged in plaintiff's amended complaint, was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratifed the act

of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

49. If you are reasonably satisfied from all of the evidence in the case that defendant, C. L. McCutcheon, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

50. If you are reasonably satisfied from all of the evidence in the case that defendant, M. L. Hall, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

51. If you are reasonably satisfied from all of the evidence in the case that defendant, Bruce Barnett, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that

such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

52. If you are reasonably satisfied from all of the evidence in the case that defendant, H. M. Baum, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratifed the act of another person who caused other employees of plaintiff by means of intimidation or threats of force

or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

53. If you are reasonably satisfied from all of the evidence in the case that defendant H. K. Parker at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratifed the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

55. If you are reasonably satisfied from all of the evidence in the case that defendant, W. L. Grissom, at the time alleged in plaintiff's amended com-

plaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaitiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

57. If you are reasonably satisfied from all of the evidence in the case that defendant R. H. Letchman at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another

person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratifed the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

58. If you are reasonably satisfied from all of the evidence in the case that defendant, William F. Pennington, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against each defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

59. If you are reasonably satisfied from all of the evidence in the case that defendant, Howard Eugene Anderson, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

60. If you are reasonably satisfied from all of the evidence in the case that defendant Oliver C. Breedlove at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in

causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

61. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against A. R. Thomas unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

62. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against J. M. Weldon unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

63. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against C. L. McCutcheon unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to

perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

64. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against M. L. Hall unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence, not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

65. Getlemenn of the jury, I charge you that you cannot find for the plaintiff and against Bruce Barnett unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees

of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

66. Genelemen of the jury, I charge you that you cannot find for the plaintiff and against William F. Pennington unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

67. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against Howard Eugene Anderson unless you are reasonably satisfied from all the evidence in the case that such defendants

actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

68. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against J. B. Otts, Jr., unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

69. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against H. M. Baum unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force, or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

70. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against H. K. Parker unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

72. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against W. L. Grissom unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

74. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against R. H. Letchman unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform

their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

75. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against Oliver C. Breedlove unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

PLAINTIFF'S CHARGES REFUSED.

(Title Omitted.)

1. The Court charges you that, if you believe the evidence in this case, your verdict should be in favor of the plaintiff.

Refused.

GROOMS,
J.

2. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, Howard E. Anderson.

Refused.

GROOMS,
J.

3. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, H. M. Baum.

Refused.

GROOMS,
J.

4. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, Bruce Barnett.

Refused.

GROOMS,
J.

5. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. O. Bentley.

Refused.

GROOMS,
J.

6. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, O. C. Breedlove.

Refused.

GROOMS,
J.

7. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. M. Brown, Jr.

Refused.

GROOMS,
J.

8. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. B. Bryam.

Refused.

GROOMS,
J.

9. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, H. D. Dismukes.

Refused.

GROOMS,
J.

10. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, W. L. Grissom.

Refused.

GROOMS,
J.

11. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, M. L. Hall.

Refused.

GROOMS,
J.

12. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, Austin E. Hicks.

Refused.

GROOMS,
J.

13. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, R. M. Letchman.

Refused.

GROOMS,
J.

14. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, C. L. McCutcheon.

Refused.

GROOMS,
J.

15. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. B. Otts.

Refused.

GROOMS,
J.

16. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, H. K. Parker.

Refused.

GROOMS,
J.

17. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, W. F. Pennington.

Refused.

GROOMS,
J.

18. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, Howard E. Southerland.

Refused.

GROOMS,
J.

19. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, R. A. Sutterlin.

Refused.

GROOMS,
J.

20. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, A. R. Thomas.

Refused.

GROOMS,
J.

21. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. M. Weldon.

Refused.

GROOMS,
J.

28. The Court charges you that if there is a labor agreement between parties to a labor dispute which provides methods of settlement of disputes and grievances, it is the duty of both parties thereto to resort to its terms to settle or adjust such a grievance or dispute.

Refused.

GROOMS,
J.

29. The Court charges you that if you believe the evidence in this case there was no labor dispute within the meaning of the Railway Labor Act between the plaintiff and its employees on October 23, 1955.

Refused.

GROOMS,
J.

30. The Court charges you that if you believe the evidence in this case there was no labor dispute within the purview of the Railway Labor Act existing between this plaintiff and its employees at the time and on the occasions complained of in this case.

Refused.

GROOMS,
J.

31. The Court charges you that if you believe the evidence in this case, there was no labor dispute within the meaning of Section 6 of the Norris-LaGuardia Act existing between the plaintiff and its employees on the occasion complained of.

Refused.

GROOMS,
J.

36. The Court charges you that the fact of membership in a labor organization does not afford an individual immunity in a Court of law from personal responsibility for his own tortious and wrongful acts.

Refused.

GROOMS,
J.

37. The Court charges you that if you believe the evidence in this case and are reasonably satisfied therefrom that the grievance over which the defendants claim to have struck was a grievance for the settlement or adjustment of which there existed a contract between the men affected by such grievance

and their employer, then a strike called to coerce the employer with respect to such grievance, prior to the orderly processing of the grievance, was an illegal strike.

Refused.

GROOMS,
J.

38. The Court charges you that if you believe the evidence in this case and are reasonably satisfied therefrom that the grievance over which the defendants claim to have struck was a grievance for the settlement or adjustment of which there existed a contract between the men affected by such grievance and their employer, then a strike called to coerce the employer with respect to such grievance, prior to the orderly processing of the grievance, was an illegal strike and those participating therein were guilty of illegal conduct in respect of anything they may have done to further such strike.

Refused.

GROOMS,
J.

39. The Court charges you that if you believe the evidence in this case, the strike occurring at or about 9:00 o'clock P.M. on October 23, 1955, against the plaintiff at its Boyles Yards was an illegal strike.

Refused.

GROOMS,
J.

40. The Court charges you that if you believe the evidence in this case, the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. M. Baum, A. R. Thomas, J. M. Weldon, C. L. McCutcheon, W. L. Grissom, M. L. Hall, R. H. Letchman, Bruce Barnett, Howard E. Anderson and Oliver C. Breedlove were not members of an association or organization participating or interested in a labor dispute on the occasion complained of within the meaning of Section 6 of the Norris-LaGuardia Act.

Refused.

GROOMS,
J.

41. The Court charges you that the employees of the plaintiff have the right to organize themselves into a brotherhood or association for their mutual protection and betterment and, having done so, to enter into a contract with the plaintiff as an employer, governing the terms of their employment and the adjustment of grievances or disputes arising out of their relationship as employer and employees, and it is the duty of both parties to such a contract to abide by its terms and the law of the land with respect to the settlement of any such dispute or grievance which may arise under such contract.

Refused.

GROOMS,
J.

43. The Court charges you that if you should find that the strike which began at or about 9:00 o'clock P.M. October 23, 1955, at plaintiff's Boyles Yard was

a legal and proper strike, but that these defendants, or some of them, did or participated in the doing of acts of violence or made threats of violence in the prosecution of such strike, such defendants would not be afforded immunity from responsibility for such acts or threats, by reason of the fact that they were committed in connection with a legal and lawful strike.

Refused.

GROOMS,
J.

44. The Court charges you, gentlemen of the jury, that the defendants in this case who were members of the Brotherhood of Locomotive Firemen and Enginemen were parties to a contract under the terms of which local grievances not settled with local officials of the railroad company were required to be handled by the general officials of the union with the general officials of the railroad company, and were required to be handled by such general officials in the manner prescribed by the Railway Labor Act.

Refused.

GROOMS,
J.

45. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants or some of them caused a "wildcat" or illegal strike not sponsored or approved by any labor organization or association authorized to represent the plaintiff's employees or some of them, then such

defendants are not entitled to the benefit of any law protecting or guaranteeing the right to strike.

Refused.

GROOMS,
J.

46. I charge you, gentlemen of the jury, that the plaintiff does not under the issues in this case seek to hold responsible or liable any defendant because of membership in or the holding of office in any association or organization participating or interested in a labor dispute.

Refused.

GROOMS,
J.

47. I charge you that under the evidence in this case none of the defendants was acting as a member or officer of an association or organization participating or interested in a labor dispute at the time of the commission of the various acts committed or alleged to have been committed by the defendants and causing the interruption of plaintiff's business.

Refused.

GROOMS,
J.

48. I charge you, gentlemen of the jury, that under the issues in this case it is not sought to hold any defendant responsible or liable because of membership in or the holding of office in any association

or organization participating or interested in a labor dispute.

Refused.

GROOMS,
J.

49. I charge you that under the issues in this case it is not sought to hold any of the defendants responsible or liable for the unlawful acts of any officer, member or agent of any association or organization participating or interested in a labor dispute committed within the line and scope of his authority as such officer, member or agent but that on the contrary the defendants are charged as individual persons who have joined together to commit and have committed the acts with which they are charged.

Refused.

GROOMS,
J.

50. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants acted as individuals in the commission of the acts they are charged with in this case rather than as members in or officers of any labor association or organization participating or interested in a labor dispute then Section 6 of the Norris-LaGuardia Act does not protect them.

Refused.

GROOMS,
J.

51. I charge you that no association or organization participating or interested in a labor dispute is a party to this case and that no defendant is sought to be held liable or responsible in this case on account of or on the basis of such defendant's membership in or the holding of office in any such association or organization.

Refused.

GROOMS,
J.

52. I charge you that the contract between the Louisville and Nashville Railroad Company and the Brotherhood of Locomotive Firemen and Enginemen contains provisions relating to the settlement of disputes and grievances by a procedure designed to prevent disruption of business and that such contract is construed by the Court to prohibit a strike over such disputes or grievances without following the procedure outlined in said contract.

Refused.

GROOMS,
J.

53. I charge you that the contract between the Louisville and Nashville Railroad Company and the Brotherhood of Locomotive Firemen and Enginemen in effect in October of 1955 prohibited a strike over disputes and grievances for which settlement procedures were provided and that a strike over a dis-

pute or grievance covered by such provisions would be an illegal strike.

Refused.

GROOMS,
J.

54. I charge you that under Section 32(f) of the Agreement between the Louisville and Nashville Railroad and its Locomotive Firemen and Hostlers in effect in October of 1955 grievance procedures were provided for local grievances and difference of opinion and that a strike over such a local grievance or difference of opinion in violation of that agreement is illegal.

Refused.

GROOMS,
J.

55. I charge you that Section 32(f) of the Agreement in effect in October of 1955 between the Louisville and Nashville Railroad Company and its Locomotive Firemen and Hostlers prohibited by implication a strike over a local grievance or difference of opinion while such local grievance or difference of opinion was in the process of being handled between Company officials and Union officers and that a strike in violation thereof over such a grievance or difference of opinion would be an illegal strike.

Refused.

GROOMS,
J.

56. I charge you that Section 32(f) of the Agreement in effect in October of 1955 between the Louisville and Nashville Railroad Company and its Locomotive Firemen and Hostlers prohibited by implication a strike over a local grievance or difference of opinion while such local grievance or difference of opinion was in the process of being handled between Company officials and Union officers and that if you are reasonably satisfied by a preponderance of the evidence that the dispute over the outside hostler helper jobs was being handled between Company officials and Union officers as provided by said agreement then you must find the strike on account of such grievance illegal.

Refused.

GROOMS,
J.

57. I charge you that the strike against the plaintiff over the abolition of the hostler helper jobs was illegal.

Refused.

GROOMS.
J.

58. I charge you that the strike against the plaintiff over the abolition of the hostler helper jobs at the Boyles Yard was over a local grievance or difference of opinion and was under Sections 32(f) and 32(g) of the agreement in effect between the Louisville and Nashville Railroad Company was illegal provided you are reasonably satisfied by a fair proponderance of the evidence that the matter was being

taken up between company officials and union officials as provided by said sections.

Refused.

GROOMS,
J.

59. I charge you that the strike against the plaintiff over the abolition of the hostler helper jobs was in violation of Sectons 32(f) and 32(g) of the agreement then in effect between the Louisville and Nashville Railroad Company and its Locomotive Firemen and Hostlers and illegal.

Refused.

GROOMS,
J.

60. I charge you that the strike against the plaintiff over the abolition of the hostler helper jobs was in violation of the provisions of the Railway Labor Act and illegal.

Refused.

GROOMS,
J.

61. I charge you that the dispute or disagreement over the abolition of the outside hostler helper jobs was a local dispute or difference of opinion and that if you are reasonably satisfied by a fair preponderance of the evidence that the strike against the plaintiff from October 23 to October 26, 1955, inclusive, was over the abolition of these jobs, then you must find such strike was illegal under the pro-

visions of Section 32 of the agreement then in effect between the plaintiff and the Brotherhood of Railroad Firemen and Enginemen.

Refused.

GROOMS,
J.

62. I charge you that the dispute or disagreement over the abolition of the outside hostler helper jobs was a so-called minor dispute for the settlement of which provision is made under the Railway Labor Act by the National Railroad Adjustment Board and that a strike over such a minor dispute is in violation of that Act and illegal.

Refused.

GROOMS,
J.

63. I charge you that the dispute or disagreement over the abolition of the outside hostler helper jobs was a so-called minor dispute for the settlement of which provision is made under the Railway Labor Act by the National Railroad Adjustment Board and that a strike over such a minor dispute is in violation of that Act and illegal and that if you are reasonably satisfied by a fair preponderance of the evidence that the strike against plaintiff from October 23 to October 26, 1955, inclusive, was over the abolition of the outside hostler helper jobs, then you must find that such strike was illegal.

Refused.

GROOMS,
J.

64. I charge you that the defendants are charged with the commission of acts in furtherance of a combination or conspiracy to interrupt plaintiff's railroad business by use of violence and threats of force and violence and that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants, or any of them, by acts of violence or threats of force and violence did proximately cause an interruption of the plaintiff's business, then your verdict should be for the plaintiff and against the defendants found to have committed such acts or engaged in such threats.

Refused.

GROOMS,
J.

65. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence in this case that the defendants or any of them committed acts of violence or threatened to commit acts of force and violence and by such acts or threats proximately caused the interruption of plaintiff's operation as a railroad to its injury, then you must find for the plaintiff and against such defendants.

Refused.

GROOMS,
J.

66. I charge you, gentlemen of the jury, that conspiracy may be proved by circumstantial evidence.

Refused.

GROOMS,
J.

67. I charge you, gentlemen of the jury, as a point of the law in this case, if you are reasonably satisfied from the evidence that two or more of the defendants, by prearrangement, entered upon a common purpose, either to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means, then I charge you such combination would be, in law, a conspracy, and if you are further reasonably satisfed from the evidence that the defendant O. C. Breedlove was not a party to the original agreement, but that he joined in with them and committed acts which were in furtherance of the original purpose, said O. C. Breedlove, to the extent, if any, that the orginal parties to such conspiracy are liable for such damages as you may be reasonably satisfied were proximately caused by acts committed pursuant to said purpose, is jointly and severally liable as though he had been a party to the original conspiracy.

Refused.

GROOMS,
J.

68. I charge you, gentlemen of the jury, as a point of the law in this case, if you are reasonably satisfied from the evidence that two or more of the defendants, by prearrangement, entered upon a common purpose, either to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means, then I charge you such combination would be, in law, a conspiracy, and if you are further reasonably satisfied from the evidence that the defendant W. F. Pennington was not a party to the original agreement, but that he joined in with them and committed acts which were in furtherance of the original

purpose, said W. F. Pennington, to the extent, if any, that the original parties to such conspiracy are liable for such damages as you may be reasonably satisfied were proximately caused by acts committed pursuant to said purpose, is jointly and severally liable as though he had been a party to the original conspiracy.

Refused.

GROOMS,
J.

69. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that any defendant threatened or intimidated by threats of force or violence any other employee of plaintiff and that as a proximate consequence thereof plaintiff was injured in the manner alleged, then your verdict must be for the plaintiff and against such defendant.

Refused.

GROOMS,
J.

70. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants or any two or more of them conspired or combined to injure plaintiff in the manner alleged and that pursuant to said conspiracy or combination any member or co-conspirator threatened, or intimidated by threats of force and violence, any other employee of plaintiff and as a proximate consequence thereof the plaintiff was injured in the manner alleged, then the act of such member or co-conspirator is the act of all of the members of the said con-

spiracy or combination and your verdict should be for the plaintiff and against the defendants found to have so conspired or combined.

Refused.

GROOMS,
J.

71. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants or any two or more of them conspired or combined to injure plaintiff in the manner alleged and that pursuant to said conspiracy or combination any member thereof threatened or intimidated other employees of plaintiff and that as a consequence thereof plaintiff was injured in the manner alleged, then your verdict must be for the plaintiff and against such defendants as are found to have conspired or combined in such manner.

Refused.

GROOMS,
J.

72. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that any defendant did any act in furtherance of a conspiracy to injure plaintiff in the manner alleged and that as proximate consequence thereof plaintiff was injured as alleged, then your verdict must be for the plaintiff and against such defendant.

Refused.

GROOMS,
J.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant Oliver C. Breedlove, Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant Howard Eugene Anderson, Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant William F. Pennington, Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956

(Title Omitted.)

We, the jury, find for the defendant Bruce Barnett Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant J. B. Otts, Jr. Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant R. H. Letchman Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant M. L. Hall Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant W. L. Grissom Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant C. L. McCutcheon Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury find for the defendant J. M. Weldon Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant H. K. Parker Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury find for the defendant A. R. Thomas Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant H. M. Baum Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant J. M. Brown, Jr. October 2, 1956.

THOMAS HAGAN,
Foreman.

CLERK'S COURT MINUTES.

(Title Omitted.)

Tuesday, October 2nd, 1956.

This case having duly come on for hearing or trial on the 24th day of September upon complaint as amended and answers as amended as to the parties

above-named, and there appearing Lange, Simpson, Robinson & Somerville; Gibson & Gibson, for plaintiff; Jackson, Pettus, Rives & Peterson; Macey Taylor, for defendant; and thereupon the issues raised having been duly presented, argued and submitted to the Court (and jury), it was, on October 2, 1956, decided and adjudged by the Court as follows:

order striking H. E. Southerland and R. A. Sutterlin as parties defendant upon motion of plaintiff at the close of all the evidence; upon verdicts of the jury finding separately for the defendants, judgment entered for the defendants, J. M. Brown, Jr.; H. M. Baum; A. R. Thomas; H. K. Parker; J. M. Weldon; C. L. McCutcheon; W. L. Grissom; M. L. Hall; R. H. Letchman; J. B. Otts, Jr.; Bruce Barnett; William F. Pennington; Howard Eugene Anderson; and Oliver C. Breedlove,

and taxing costs against plaintiff.

WILLIAM E. DAVIS,
Clerk.
By DAN STRONG,
Deputy Clerk.

Birmingham, Alabama.

GROUNDS OF OBJECTION TO COURT'S REFUSAL TO GRANT CERTAIN INSTRUCTIONS REQUESTED IN WRITING BY PLAINTIFF.

Filed Oct. 5, 1956.

(Title Omitted.)

Comes the plaintiff pursuant to agreement of counsel and by leave of Court and assigns grounds of objection to the Court's refusal to give to the jury certain written charges or instructions requested by plaintiff as follows:

I.

Plaintiff assigns, separately and severally, as grounds of objection to the Court's refusal to give requested charges 31, 40, 46, 47, 48, 49, 50 and 51, separately and severally, the following:

1. Said charge is correct as a matter of law.

2. Said charge relates to matters fairly raised by the evidence in this case.

3. Said charge correctly states the law applicable to matters fairly raised by the evidence.

4. Said charge, together with the others hereinabove enumerated related to the applicability of Section 6 of the Norris-LaGuardia Act (29 U.S. Code Sec. 106) to this case and plaintiff objects, without waiving its objection heretofore made to the Court's charge to the effect that said Section applies to this case, to

the refusal to grant the enumerated requested written charges on the ground that the jury should have been instructed as to the conditions under which said Section might apply and to the findings necessary as a prequisite to such applicability.

5. Section 6 of the Norris-LaGuardia Act (Title 29 U.S. Code, Sec. 106) does not apply to this case.

6. The plaintiff is entitled to have the jury instructed that no defendant is sought to be held responsible because of his membership in or his holding of office in any association or organization participating or interested in a labor dispute.

7. The plaintiff is entitled to have the jury instructed that no association or organization participating or interested in a labor dispute is a party to the cause.

8. The plaintiff is entitled to have the jury instructed that the defendants are sued as individuals acting on their own individual behalf and not as members of a labor organization or association participating or interested in a labor dispute.

9. The plaintiff is entitled to have the jury instructed that the defendants were not members of an association or organization participating or interested in a labor dispute on the occasion complained of.

10. The plantiff is entitled to have the jury instructed that there was no labor dispute within the meaning of said Section 6 of the Norris-LaGuardia Act at the time of the acts complained of.

II.

The plaintiff assigns, separately and severally, as grounds of objection to the Court's refusal to give requested charges 39, 45 and 57, separately and severally, the following:

1. Said charge is correct as a matter of law.

2. Said charge relates to matters fairly raised by the evidence in this case.

3. Said charge states a correct proposition of law applicable to issues fairly raised by the evidence in this case.

4. The plaintiff is entitled to have the jury instructed as to the legality or illegality of the strike.

5. The plaintiff is entitled to have the jury instructed that the strike was illegal. The strike against plaintiff was, under the evidence in this case, illegal and the plaintiff was entitled to have the jury so instructed.

6. A wildcat strike is, under the law, illegal and those proximately causing such a strike are not entitled to the protection of laws otherwise guaranteeing and protecting the right to strike and the plaintiff is entitled to have the jury so insructed.

7. Under the evidence in the case, there was grievance machinery provided under a contract between palintiff and a labor organization legally representing its employees and no employee or group of employees

had the right in violation of said agreement to cause a wildcat strike and plaintiff is entitled to have the jury so instructed.

III.

Plaintiff assigns, separately and severally, as grounds of objection to the Court's refusal to give charges 28, 37, 38, 41, 44, 52, 53, 54, 55, 56, 58, 59 and 61, separately and severally, the following:

1. Said charge is correct as a matter of law.

2. Said charge relates to matters fairly raised by the evidence in this case.

3. Said charge states correctly a proposition of law applicable to issues fairly raised by the evidence in this case.

4. Said charge and all others enumerated herein above with it relates to the illegality of a strike over a grievance or disagreement for which specific grieveance procedures are provided under a contract between an employer and the duly authorized representative of its employees and plaintiff is entitled to have the jury instructed that a strike under such circumstances is illegal.

5. The plaintiff is entitled to have the jury instructed that a strike over a matter for which specific grievance procedures are provided in a contract between an employer and its employees' representative is illegal and deprives those causing said strike of the benefit and protection of any law or rule of law otherwise protecting and guaranteeing the right to strike.

6. The plaintiff is entitled to have the jury instructed that employees may give up by contract their right or privilege to strike over certain grievances and that having done so a strike over any such grievance is illegal.

7. The plaintiff is entitled to have the jury instructed that as a matter of law a contract providing grievance machinery for certain defined grievances or disagreements is to be interpreted or construed to prohibit a strike over such a grievance or disagreement so as to render nugatory such contract provisions.

8. The plaintiff is entitled to instructions from the Court interpreting or construing the contract between the plaintiff and the formen and hostlers which contract is in evidence and provided machinery for the handling of grievances of which the dispute over the hostler helper jobs was one. A contract providing for the orderly settlement of certain grievances or disagreements should be construed or interpreted as prohibiting a strike over such grievances or disagreements.

International Brotherhood of Teamsters, etc. v. W. L. Mead, Inc., 230 F 2d 573.

United Construction Workers v. Haislip Baking Co. 223 F 2d 872.

NLRB v. Sands, 306 U. S. 332.

NLRB v. Dorsey, 179 F 2d 589.

IV.

Plaintiff assigns, separately and severally, as grounds of objection to the Court's refusal to give requested written charges 60, 62 and 63, separately and severally, the following:

1. Said charge is correct as a matter of law.

2. Said charge relates to matters fairly raised by the evidence in this case.

3. Said charge states correctly a proposition of law applicable to issues fairly raised by the evidence in this case.

4. Said charge correctly defined the dispute, if any, a "minor" dispute and the plaintiff is entitled to have the jury so charged.

5. A strike over a minor dispute is, under the Railway Labor Act, an illegal strike and the plaintiff is entitled to have the jury so instructed.

6. The plaintiff is entitled to have the jury instructed as a matter of law that the grievance over the abolition of the hostler helper jobs was such a grievance as was under the provisions of the Railway Labor Act to be determined in accordance with established procedure and, if necessary, to be referred to the National Railroad Adjustment Board and that a strike over such a minor grievance was illegal.

Chicago River and Indiana Railroad Co. v. Brotherhood of Railroad Trainmen, 229 F 2d 926.

V.

Plaintiff assigns, separately and severally, as grounds of objection to the Court's refusal to give requested written charges 17, 20 and 21, separately and severally, the following:

1. Plaintiff proved by substantial evidence not disputed by any credible testimony the actual participation by the defendant named in said charge in intimidation of and threats directed at plaintiff's employees as a direct consequence of which plaintiff was injured as alleged.

2. Plaintiff proved by substantial evidence, not disputed by any credible testimony, actual acts of violence on the part of the defendant named in said charge, and as a proximate consequence of which plaintiff was injured as alleged.

3. The defendant named in said charge admitted his participation in acts of violence, intimidation of or threats drected at other employees and plaintiff proved it was injured as alleged as a proximate result thereof.

JAMES A. SIMPSON,
ROBERT McD. SMITH,
WHITE E. GIBSON, JR.,
Attorneys for Plaintiff.

H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing was served upon Hon. R. Macey Taylor, by mailing a copy of the same, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 5th day of October, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

I hereby certify that a copy of the foregoing was served upon Hon. Erle Pettus, Jr. by mailing a copy of the same, postage prepaid to his office in the Massey Building, Birmingham, Alabama, this 5th day of October, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

MOTION FOR NEW TRIAL.

Filed Oct. 10, 1956.

(Title Omitted.)

Comes the plaintiff in the above styled cause and moves the Court to set aside the verdict of the jury heretofore returned, and the judgment rendered there on, and to grant to the plaintiff a new trial and for grounds of said motion, the plaintiff sets down and assigns, separately and severally, the following, viz:

1. The said verdict is contrary to the law of the case.

2. The said verdict is contrary to the evidence in the case.

3. The said verdict is against the weight of the evidence.

4. The said verdict is contrary to the law and to the evidence.

5. For that the said verdict was procured by reason of partiality of the jury in favor of the defendants and against the plaintiff.

6. The said verdict is the result of prejudice, bias or passion on the part of the jury.

7. The said verdict is so palpably erroneous as to indicate bias, prejudice or some other improper influence on the part of the jury.

8. The Court erred in instructing the jury, over timely objection on the part of the plaintiff, as follows:

"Now, gentlemen, the law, that is the basic or substantive law, that controls this case is the law of Alabama, except as modified by a provision of the Federal Statutes, found in what is known as the Norris-LaGuardia Act.

This railroad, as it has averred here, is engaged in interstate commerce, and Congress, of course, has a right to control, or has a right to legislate with respect to instrumentalities of interstate commerce.

Now the Section that I have reference to is Section 106 of Title 29 of the United States Code. And it reads as follows:

'No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable in any Court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in or actual authorization of such acts, or of ratification of such acts after actual knowledge thereof.'

Now, gentlemen, you keep that Statute in mind when I charge you with respect to a conspiracy."

9. The Court erred in instructing the jury in effect that Section 106 of Title 29 of the United States Code is applicable to this case.

10. The Court committed prejudicial error against the interests of the plaintiff in refusing to grant plaintiff's motion for a directed verdict at the close of all the evidence.

11. The Court committed prejudicial error against the interests of the plaintiff in sustaining objections to questions asked various witnesses with respect to violence and intimidation in connection with earlier labor disputes or strikes.

12. The Court committed prejudicial error against the interests of the plaintiff in sustaining objections, to which ruling of the Court the plaintiff then and

there did duly except on repeated occasions to questions propounded to various witnesses by the plaintiff relating to physical violence, sabotage and intimidation during a strike affecting plaintiff within the same geographic area as involved in this case during the month of August, 1955.

13. The Court committed prejudicial error against the interests of the plaintiff in sustaining objections, to which ruling of the Court the plaintiff then and there did duly except on repeated occasions to questions propounded to various witnesses by the plaintiff relating to physical violence, sabotage and intimidation during a strike affecting plaintiff wthn the same geographic area as involved in this case between the months of March and May, 1955.

14. The Court committed prejudicial error against the interests of the plaintiff in sustaining objections, to which exception was duly made to questions calculated to place before the jury the background of violence within which the various acts of the defendants were committed.

15. The Court committed prejudicial error against the interest of the plaintiff in refusing to permit plaintiff to prove the acts of violence and intimidation and the general knowledge thereof related to the so-called 58-day strike.

16. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"17. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, W. F. Pennington."

17. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"20. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, A. R. Thomas."

18. The Court admitted prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"21. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. M. Weldon."

19. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"50. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants acted as individuals in the commission of the acts they are charged with in this case rather than as members in or officers of any labor associa-

tion or organization participating or interested in a labor dispute then Section 6 of the Norris-LaGuardia Act does not protect them."

20. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"51. I charge you that no association or organization participating or interested in a labor dispute is a party to this case and that no defendant is sought to be held liable or responsible in this case on account of or on the basis of such defendant's membership in or the holding of office in any such association or organization."

21. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"45. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants or some of them cause a "wildcat" or illegal strike not sponsored or approved by any labor organization or association authorized to represent the plaintiff's employees or some of them, then such defendants are not entitled to the benefit of any law protecting or guaranteeing the right to strike."

22. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"28. The Court charges you that if there is a labor agreement between parties to a labor dispute which provides methods of settlement of disputes and grievances, it is the duty of both parties thereto to resort to its terms to settle or adjust such a grievance or dispute."

23. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"37. The Court charges you that if you believe the evidence in this case and are reasonably satisfied therefrom that the grievance over which the defendants claim to have struck was a grievance for the settlement or adjustment of which there existed a contract between the men affected by such grievance and their employer, then a strike called to coerce the employer with respect to such grievance, prior to the orderly processing of the grievance, was an illegal strike."

24. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"61. I charge you that the dispute or disagreement over the abolition of the outside hostler helper jobs was a local dispute or difference of opinion and that if you are reasonably satisfied by a fair preponderance of the evidence that the strike against the plaintiff from October 23 to October 26, 1955, inclusive, was over the abolition of these jobs, then you must

find such strike was illegal under the provisions of Section 32 of the agreement then in effect between the plaintiff and the Brotherhood of Railroad Firemen and Enginemen."

25. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"62. I charge you that the dispute or disagreement over the abolition of the outside hostler helper jobs was a so-called minor dispute for the settlement of which provision is made under the Railway Labor Act by the National Railroad Adjustment Board and that a strike over such a minor dispute is in violation of that Act and illegal."

26. The Court committed prejudicial error against the interests of the plaintiff in dismissing, upon motion of the defendants, Count One of the plaintiff's complaint.

27. The Court committed prejudicial error against the interests of the plaintiff in dimissing, upon motion of the defendants, Count Two of the plaintiff's complaint.

LANGE, SIMPSON, ROBINSON
& SOMERVILLE,
WHITE E. GIBSON, JR.,
Attorneys for Plaintiff.

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Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing Motion for New Trial has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by delivering a copy of same to his office in the Frank Nelson Building, Birmingham, Alabama, this 10th day of October, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing Motion for New Trial has been served upon Hon. Erle Pettus, Jr., attorney for defendants for whom he appears, by delivering a copy of same to his office in the Massey Building, Birmingham, Alabama, this 10th day of October, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

OBJECTION AND MOTION TO STRIKE.

Filed Nov. 15, 1956.

(Title Omitted.)

Come the defendants, separately and severally, by their respective attorneys, and hereby object separately and severally to the filing by plaintiff of the amendment to motion for ne trial and/or in the alternative move the Court to strike the amendment to motion

for new trial filed by plaintiff in this cause on, towit, November 14, 1956, and as grounds therefor set down the following, separately and severally, to-wit:

1. The amendment to motion for new trial was not timely filed.

2. The Court has no jurisdiction of the amendment to motion for new trial.

3. The amendment to motion for new trial was not filed in accordance with the Federal Rules of Civil Procedure.

4. The amendment to motion for new trial is contrary to the provisions of the Federal Rules of Civil Procedure.

5. The Court lost jurisdiction to consider any motion for new trial or any amendment thereto unless same was served "not later than ten days after the entry of the judgment".

6. Rule 59 of the Federal Rules of Civil Procedure prohibits the filing of plaintiff's motion for new trial.

7. Rule 59 of the Federal Rules of Civil Procedure pronibits the filing of any affidavits appended to the amendment to motion for new trial.

8. The amendment to motion for new trial shows on its face that it is filed more than ten days after the entry of the judgment and is not timely filed under Rule 59 of the Federal Rules of Civil Procedure.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
R. MACEY TAYLOR,
(R. Macey Taylor).
JACKSON, RIVES, PETTUS & PETERSON,
Of Counsel.

Certificate of Service.

A copy of the foregoing objections and motion to strike has been served upon the Hon. James A. Simpson, attorney for plaintiff, on this the 15th day of November, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.).

AMENDMENT TO MOTION FOR NEW TRIAL.

Filed Nov. 15, 1956.

(Title Omitted.)

Comes the plaintiff and leave of Court being first had and obtained amends its Motion for New Trial heretofore filed in this cause by adding thereto the following additional grounds of which it did not have knowledge or proof in time to include in its original motion, viz:

28. For that the defendants and certain persons acting in collusion and concert with them and as

their agents, both before, during and after the trial of this cause, have by threats and other apt means of intimidation so frightened and terrorized persons who would have been witnesses to material facts on the trial of this cause or would be witnesses in support of this motion for new trial that the plaintiff was on the trial of this cause and now is deprived of the benefit of such testimony to its substantial detriment and prejudice.

29. For that witnesses who testified for the plaintiff on the trial of this cause have, since the trial of this cause, been f ghtened, intimidated and terrorized by threats of violence, show of force and use of menacing words and acts by the defendants and by those acting in concert and collusion with them and as their agents to the substantial detriment and injury of the plaintiff in the trial and conduct of this cause.

30. For that the defendants have by a long course of threats of injury and violence so intimidated and coerced the witnesses for the plaintiff in this cause that said witnesses were unwilling to and failed and refused to testify to certain material facts known to them to the substantial injury and detriment of the plaintiff in the trial of this cause.

31. For that certain of the defendants and other persons acting in concert and collusion with them and as their agents have during and subsequent to the trial of this cause, initiated and continued a course of threats of violence and intimidation against certain witnesses who testified or were subpoenaed to testify for the plaintiff on the trial of this cause all in con-

tempt of the dignity and authority of this Honorable Court and to the substantial injury and detriment of the plaintiff in the conduct of this litigation.

32. For that, subsequent to the conclusion of the trial of this cause, it came to the attention of the plaintiff and the plaintiff now charges that an improper and illegal approach was made to a member of the jury before whom the case was on trial with respect to the case and same was discussed with said juror and he was requested to favor the defendants with his verdict, all to the great injury, detriment and damage of the plaintiff.

33. For that the defendants, or some of them and others acting in collusion and concert with them and as their agents, did during the course of this trial and before its conclusion and have continuously subsequent thereto, engaged in the use of insulting and opprobrious language toward witnesses for the plaintiff and have engaged and encouraged others to engage in coercive and oppressive conduct toward witnesses for the plaintiff and have engaged in reprisals and conduct tending to a breach of the peace toward witnesses for the plaintiff, all to the damage, injury and detriment of the plaintiff and against the dignity and authority of this Honorable Court.

H. G. BREETZ,
(H. G. Breetz),
GIBSON & GIBSON,
(Gibson & Gibson),
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
(Lange, Simpson, Robinson & Somerville),
Attorneys for Plaintiff.

H. G. BREETZ,
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Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel for Plaintiff.

A copy of the foregoing amendment to the motion for new trial has been served upon the Hon. R. Macey Taylor and upon the Hon. Erle Pettus, Jr., attorneys for defendants, on this the 14th day of November, 1956, together with copies of the affidavits of T. B. Wilder and E. L. Sexton and C. F. Hobson, offered in support thereof.

J. A. SIMPSON,
Of Counsel for Plaintiff.

Filed Nov. 15, 1956.

State of Alabama,
Jefferson County.

Personally appeared before me, the undersigned authority in and for said County in said State, Ted B. Wilder, who is known to me, and who being by me first duly sworn upon his oath deposes and says as follows:

I am fifty-two years of age, am a locomotive engineer for Louisville and Nashville Railroad Company, and have worked for the company for thirty-three years. I was ordered as a witness for the plaintiff in the case of Louisville and Nashville Railroad Company v. J. M. Brown, Jr., et al., which was tried

in the United States District Court in Birmingham, Alabama, September 24 to October 1, 1956, both inclusive. On Wednesday, September 26, I testified concerning an incident which happened at Montgomery, Alabama on September 25, 1955, involving H. D. Dismukes, J. B. Byram and A. E. Hicks, three of the defendants.

On October 5, 1956, after the jury had returned a verdict for the defendants, I drove along Vanderbilt Road en route to work, at about 2:45 P.M. When I arrived near the Round House gate at Boyles, I slowed my car to turn in, and saw O. C. Breedlove, one of the defendants in the case, standing in front of the Rex Barbecue stand. As I started past he shouted at me, "Hello, you damned yellow pimp." I turned my car around and drove back to where he was and stopped. Breedlove said in a very menacing voice: "You're nothing but a damned yellow Kentucky pimp." I told him I didn't want to have any trouble with him, and he replied: "You don't seem to be satisfied with the way the case came out." I then told him, in substance, that I had only testified to the truth about what had happened, and that I did not know nor testify as to anything at all about him or his activities during the time the October strike was going on. He replied that that didn't make a damn, as he and all the other defendants had been charged with conspiracy, and when I testified against any of them, I had been testifying against him. He then said: "I'm warning you, if you ever write me up about anything, I will catch you off the company property and it will be too bad for you, because I'm going to stomp your God damned guts into the ground."

On another occasion, since I testified, near the engineers' and firemen's washroom, Breedlove and H. M. Baum, one of the other defendants, made a derogatory remark to me, calling me a "company pimp".

Because of the incidents mentioned, as well as other threats which have been repeated to me, I have felt obliged to obtain a permit and to buy a pistol, in order to protect myself against the possibility of serious bodily harm.

Shortly after the jury was discharged in the case, I was assigned to a job on Avenue F, and Clerk Joe Taylor started a conversation with me about the Brown case. He expressed satisfaction with the verdict, and told me that he had been at Court as a spectator on Monday, October 1, and had walked down the steps with two of the jurymen after they were excused for the night. He stated that he had told these two jurymen that he hoped they would do anything they could to turn the defendants loose.

TED B. WILDER.

Sworn to and subscribed before me this 22nd day of October, 1956.

WHITE GIBSON, JR.,
Notary Public.

Filed Nov. 15, 1956.

State of Alabama,
Jefferson County.

Personally appeared before me, the undersigned authority in and for said county in said state, E. L.

Sexton, who is known to me, and who being by me first duly sworn on oath deposes and says as follows:

On Sunday night, September 30, 1956, while the trial of the case of Lousville and Nashville Railroad Company vs. J. M. Brown, Jr., et al., was in progress, I went into Rex Barbecue Stand on Vanderbilt Road to get some coffee. As I was leaving, I passed near a booth where Reese Thomas, H. M. Baum and Bruce Barnett, three of the defendants were seated with a fireman named C. S. Massey. The four got up and followed me to and outside the door, and one of them said, "you don't need to run". When I did not answer, Thomas said, "He has his hand in his pocket." I took my hand out of my pocket and walked on, with the other men following. On the outside, Barnett called to me, "Sexton, you told a lie about me on the witness stand". I replied that I had not told anything but the facts about him or anyone else. He then said, "Well, we are not going to bother you now, but we will get you in a night or two." During this conversation, two of the four men, Baum and Barnett stayed together, while Thomas and Massey moved off a little way from them.

After the trial was over, because of the threat made by these men, and of talk that was going around, I made application to the Sheriff for a permit to carry a pistol to protect myself.

A few nights later, about 11:00 P.M., I was alone in the washroom next to the engine dispatcher's office, where a negro dispatcher was on duty. A lighted firecracker was thrown from the room adjacent on the other side from the dispatcher's office into the room

where I was, and exploded with a loud report. I immediately went into this room, and found Baum, Thomas and Barnett there together. There was no one else in the room. None of them said anything to me, and I only looked at them.

There was a delay in the actual issuance of my pistol permit, although I was told that it would be issued as soon as I could get a pistol, and supply the serial number of it. The particular weapon I wanted, for some reason, could not be gotten promptly. While I was waiting for it, I carried a pair of "knucks" in case the group should attack me. On Wednesday, I again inquired about the pistol, and was told by the dealer that he was expecting it, but had not yet received it. He lent me a revolver to carry until mine could be gotten. On that night when I left home I took this weapon with me, not telling my wife about it for fear of worrying her. It was necessary for me to divert her attention and act quickly, and in my haste I forgot that I had the "knucks" in my pocket. When I arrived at Rex Barbecue and went in to get my thermos bottle filled with coffee, I saw a policeman leaving by another door. I saw Baum and Thomas in or near the place, but had no words with them. I left there in my car, with the revolver on the seat, and drove to the street that turns off Vanderbilt Road toward the Master Mechanic's gate. This is the place I customarily enter to go on my job. Between Vanderbilt Road and the gate I was stopped by two Birmingham policemen who searched me, finding the "knucks" in my hip pocket. This was the first time I realized I had them. They asked me whether I had a gun and I told them I did, on the seat of my car. They said they had had a tip or complaint about it, and

placed me under arrest, taking me to the City jail. I was released on bond after being held for a little over an hour, and instructed to appear in Court that morning at 9:00. At the request of Mr. White Gibson, Jr., who met me at Court, the Judge continued my case for one week, resetting it for October 17, 1956.

E. L. SEXTON.

Sworn to and subscribed before me this 11th day of October, 1956.

LUCILE ADAMS,
Notary Public.

Filed Nov. 15, 1956.

State of Alabama,
Jefferson County.

Before me, the undersigned authority in and for said county in said state, personally appeared C. F. Hobson, who is known to me, and who being by me first duly sworn upon oath, deposes and says as follows:

I was one of the witnesses for the plaintiff in the trial of the case of Louisville and Nashville Railroad Company vs. J. M. Brown, Jr., et al., which began on September 24, 1956, in the United States District Court at Birmingham. A day or two following the trial, while I was crossing Vanderbilt Road enroute from the Boyles Yard of the L&N Railroad Company to Rex Barbecue, I saw and recognized William R. Martin, an L&N employee, who is a close friend of Reese Thomas, O. C. Breedlove, and other defendants in the case, driving toward Birmingham in his automobile. When the car got near me, Martin suddenly

accelerated his speed so that I had to move very quickly to get out of the path of the automobile and avoid being hit.

After this incident no one did anything to me directly, but the defendants and their friends all ignored me and refused to look at me or speak to me. On one occasion Engineer E. A. Pruitt informed me that he had had trouble with J. M. Weldon because the latter had criticized Pruitt for speaking to me.

Shortly after the trial, four different employees who are friends of mine came to me on separate occasions and told me privately that I would have to watch my step and be very careful because I had been put on the "list." They were W. W. Cole, who told me I was on the "list" of the "boys", and that "if they couldn't get me themselves they planned to hire it done," R. A. Whitely, J. B. Cole and Joe Herron, all L & N engineers. I did not want to involve them in my troubles, so I did not ask them where they got this information. However, I took what they said, along with what I already knew about the "list," and the Martin incident, as meaning I was in danger, and I applied for and got a permit to carry a pistol for my protection, and went to the expense of buying a pistol.

On October 29, 1956, at 10:10 A.M. I saw Reese Thomas' car as I passed Morgan's Grocery on Jackson Boulevard in Tarrant. Shortly after I passed, going north, this car drove up behind me and swerved toward me, "Screeching" the tires. By this time I had reached a traffic light and the car, with Thomas driving, stopped immediately beside me. He began

cursing me, calling me a "pimp", and berating me in the foulest terms for having, as he said "testified against him." He said he had checked up and knew I had a gun. All the while he was fumbling in the seat of the car as though he had a weapon, and challenged me to draw my pistol, which I did not do. I saw two ladies I knew a short distance ahead and walked toward them, because I hoped this would cause him to stop his language, or, if he did not do so, I could use them as witnesses to get a peace bond against him. Thomas drove slowly along beside me and continued cursing me for being a witness against him, but made no further attempt to hit me with his car. Just before we got close to the women he speeded up and drove away. Since then I have had no further trouble from him.

The "list" is a term commonly known among all L&N employees to refer to certain employees who worked during the strike in March, April and May, 1955, and who were placed on a list scheduled to be beaten up because they had worked. This list was passed around after the strike referred to, and posted at various places and times on bulletin boards and elsewhere. It is common knowledge that a number of those on the "list" have been attacked, several badly beaten, and one forced to shoot one of his attackers to protect himself. Being told that you have been put on the "list" is tantamount to being told that sooner or later you will be attacked by a group of men, armed with such things as lengths of chain, clubs, brass knucks, and the like.

C. F. HOBSON.

Sworn to and subscribed before me this the 14th day of November, 1956.

LUCILE ADAMS,
Notary Public.

ORDER OVERRULING MOTION FOR NEW TRIAL.

(Title Omitted.)

This cause, coming on to be heard on the motion docket on Thursday, December 20, 1956, was submitted to the Court on the plaintiff's amended motion for a new trial and on the defendants' objections to the amended motion for a new trial or a motion to strike said amended motion for a new trial. After due consideration of said separate motions and of the oral argument of counsel:

It is Ordered, Adjudged and Decreed by the Court that the defendants' objections to the plaintiff's amendment to the motion for a new trial be and the same is hereby sustained, and plaintiff's said amendment which was filed on November 15, 1956, be and the same is hereby stricken.

It is further Ordered by the Court that the plaintiff's motion for a new trial filed in this cause on October 10, 1956, be and the same is hereby overruled and denied.

Done and Ordered, this 26 day of December, 1956.

H. H. GROOMS,
United States District Judge.

NOTICE OF APPEAL.

Filed Jan. 23, 1957.

In the United States District Court for the Northern District of Alabama, Southern Division.

Louisville & Nashville Railroad Company, a corporation, Plaintiff,

vs. Civil Action No. 8171.

J. M. Brown, Jr., et al., Defendants.

Notice is hereby given that Louisville & Nashville Railroad Company, a corporation, plaintiff in the above cause, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment in favor of defendants and against said plaintiff entered in this action on October 2, 1956, and from the order of the District Court overruling plaintiff's motion for a new trial on December 26, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff, Louisville & Nashville Railroad Company, a corporation.

H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

BOND FOR COSTS ON APPEAL.

Filed Jan. 23, 1957.

(Title Omitted.)

We, Louisville & Nashville Railroad Company, a corporation, as principal, and Reid B. Barnes and Robert McD. Smith as sureties, are held and firmly bound unto the defendants in the full and just sum of $250.00, to be paid to the said defendants, their successors, executors, administrators and assigns; to which payment, well and truly to be made, we bind ourselves, our successors, assigns, heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 22nd day of January, 1957.

Whereas, on October 2, 1956, in an action in the United States District Court for the Northern District of Alabama, between Louisville & Nashville Railroad Company as plaintiff and J. M. Brown, Jr., et al., as defendants, a judgment was rendered against the said plaintiff and the said plaintiff having filed a notice of appeal from such judgment and from the order overruling plaintiff's motion for a new trial dated December 26, 1956, to the United States Court of Appeals for the Fifth Circuit;

Now, therefore, the condition of this obligation is such, that if the said plaintiff shall prosecute his appeal to effect and shall pay costs if the appeal is dismissed or the judgment affirmed, or such costs as

the said Court of Appeals may award against the said plaintiff if the judgment is modified, then this obligation to be void; otherwise to remain in full force and effect.

LOUISVILLE & NASHVILE
RAILROAD CO.,
A corp.,
By WHITE E. GIBSON,
Its Assistant District Attorney
and duly authorized agent.
REID B. BARNES,
(Reid B. Barnes),
Surety.
ROBERT McD. SMITH,
(Robert McD. Smith),
Surety.

DESIGNATION OF RECORD ON APPEAL.

Filed Feb. 4, 1957.

(Title Omitted.)

Comes the appellant, Louisville & Nashville Railroad Company, and hereby designates the portions of the record in this action to be contained in the record on appeal.

1. The pleadings, including the complaint and all material amendments thereto, defendants' motions to dismiss and all answers and defensive pleadings of the defendants; other motions relating to the pleadings (but not including discovery motions, notices of

the taking of depositions, interrogatories, objections and answers thereto and affidavits in support of discovery proceedings or of other interlocutory matters).

2. The orders of the Court on defendants' motions. to dismiss and on other motions relating to the pleadings.

3. The pre-trial order.

4. Plaintiff's motion for directed verdict.

5. The Court's order denying plaintiff's motion for a directed verdict.

6. The charges requested by plaintiff in writing and not given.

7. Plaintiff's grounds of objection to the Court's refusal to grant its refused charges.

8. All written charges given by the Court at the request of the defendants.

9. The Court's oral charge.

10. Plaintiff's objections assigned to the Court's oral charge and to the giving of such requested charges of defendants as were given by the Court.

11. The jury's separate verdicts.

12. The final judgment of the Court.

13. All evidence introduced on the trial of the case except the testimony of witnesses William M. Breid-

enthal, Willard H. Thompson, Carl Bratton and E. H. Major and the plaintiff's exhibits 2 through 7, inclusive, which testimony and exhibits relate exclusively to the measure and amount of damages which are not involved on this appeal.

14. Plaintiff's motion for a new trial, the amendment thereto offered and affidavits in support thereof.

15. The order of the Court overruling plaintiff's motion for a new trial and disallowing the amendment offered.

16. This designation of the contents of the record.

17. Appellant's statement of points to be relied upon on appeal.

18. Notice of appeal.

19. Bond.

WHITE E. GIBSON, JR.,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing designation of record on appeal has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by mailing a copy of same to his office in the Frank Nelson Building, Birmingham, Alabama, this 1st day of February, 1957.

ROBERT McD. SMITH,
Of counsel for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing designation of record on appeal has been served upon Hon. Erle Pettus, Jr., attorney for defendants for whom he appears, by mailing a copy of same to his office in the Massey Building, Birmingham, Alabama, this 1st day of February, 1957.

ROBERT McD. SMITH,
Of counsel for Plaintiff.

STATEMENT OF POINTS ON APPEAL.

Filed Feb. 4, 1957.

(Title Omitted.)

Comes the appellant, Louisville & Nashville Railroad Company and hereby states the points upon which appellant intends to rely on appeal:

1. The Court erred in granting defendants' motions to dismiss count one of the complaint.

2. The Court erred in granting defendants' motions to dismiss count two of the complaint.

3. The Court erred in granting defendants' motions to dismiss count three of the complaint.

4. The Court erred in refusing to admit evidence of instances of violence, intimidation and sabotage on the occasion of earlier strikes and labor disputes between the plaintiff and its employees during the same year.

5. The Court erred in charging the jury in effect that Section 6 of the Norris-LaGuardia Act (Section 106 of Title 29 USCA) was applicable to this case.

6. The Court erred in refusing to instruct the jury that none of the defendants was sued as a member or an officer of a labor organization as set forth in Section 6 of the Norris-LaGuardia Act.

7. The Court erred in refusing to charge the jury that a strike in violation of an existing union contract is an unlawful strike.

8. The Court erred in refusing to charge the jury that a strike in violation of the provisions of Section 151 et. seq., of Title 45 USCA imposing upon employees the duty to exert every reasonable effort to settle all disputes between the employee and its employees is an unlawful strik.

9. The Court erred in refusing to charge the jury that a "wildcat" strike in defiance of a duly recognized labor organization authorized as the bargaining representative of the participants is an illegal strike.

10. The Court erred in refusing to charge the jury that if a strike is unlawful those participating in it are not entitled to the protection of any law guaranteeing the right to strike.

11. The Court erred in charging the jury in effect that it was not for them to determine whether the strike allegedly called by the defendants was legal or illegal.

12. The Court erred in refusing to give the written charges requested by the plaintiff shown to have been refused by the record certified upon appeal.

13. The Court erred in giving, at the request of the defendants, certain written charges shown to have been given by the record certified upon appeal in this cause.

14. The verdict was against the great weight of the evidence.

15. The Court erred in refusing to direct a verdict in favor of the plaintiff and against the defendants or some of them.

16. The Court erred in overruling plaintiff's motion for a new trial timely filed.

17. The Court erred in not allowing the plaintiff to amend its motion for a new trial.

WHITE E. GIBSON, JR.,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing statement of points on appeal has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by mailing a copy of same to his office in the Frank Nelson Building, Birmingham, Alabama, this 1st day of February, 1957.

ROBERT McD. SMITH,
Of Counsel for Plaintiff.

I hereby certify that a copy of the foregoing statement of points on appeal has been served upon Hon. Erle Pettus, Jr., attorney for defendants for whom he appears, by mailing a copy of same to his office in the Massey Building, Birmingham, Alabama, this 1st day of February, 1957.

ROBERT McD. SMITH,
Of Counsel for Plaintiff.

DESIGNATION OF ADDITIONAL PORTION OF RECORD ON APPEAL.

Filed Feb. 11, 1957.

(Title Omitted.)

Come the appellees, defendants in the trial Court, namely, J. B. Otts, Jr., J. M. Brown, Jr., William F. Pennington, Oliver C. Breedlove, Howard Eugene Anderson, Bruce Barnett, M. L. Hall, J. M. Weldon, H. K. Parker, W. L. Grissom, C. L. McCutcheon, and hereby designate additional portions of the record, proceedings and evidence to be included in the record on appeal as follows; to-wit:

1 Defendants' motion for a directed verdict and order thereon.

2. The testimony of witnesses William M. Breidenthal, Willard H. Thompson, Carl Bratton and E. H. Major, and plaintiff's Exhibits 2 through 7, inclusive, which testimony and exhibits are involved in this appeal. Any exhibits herein designated is subject to transmission to the Appellate Court under Rule 75 (i) Federal Rules of Civil Procedure.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
As Attorney for above
named Appellees.

Of Counsel:
JACKSON, RIVES,
PETTUS & PETERSON.

Certificate of Service.

I hereby certify that a copy of the foregoing Designation of Additional Portion of Record on Appeal has been served upon Hon. Robert McD. Smith, attorney for Plaintiff by mailing a copy of same to his office in the Frank Nelson Building, Birmingham, Alabama, this 11th day of February, 1957.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.).

I hereby certify that a copy of the foregoing Designation of Additional Portion of Record on Appeal has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by mailing a copy of same to his office in the Frank Nelson Building, Birmingham, Alabama, this 11th day of February, 1957.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.).

MOTION FOR EXTENSION OF TIME FOR FILING OF RECORD ON APPEAL.

Filed February 26, 1957.

(Title Omitted.)

Comes the plaintiff in the above styled cause and moves that the time for the filing of the record on appeal in said cause be extended for 50 days as allowed under Rule 73g of Federal Rules of Civil Pro-

cedure and in support of said motion, plaintiff would show the Court as follows:

1. The record in said cause is voluminous, consisting of hundreds of pages of typed material.

2. Plaintiff has assumed the responsibility of furnishing to the Clerk the greater part of the record to be furnished and will not have sufficient time to complete the preparation without this extension.

3. Defendants in this cause have agreed and consented to said extension as noted below.

ROBERT McD. SMITH,
WHITE E. GIBSON, JR.,
Attorneys for Plaintiff.

Of Counsel:
H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON
& SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama.

Defendants, by and through their respective attorneys, waive service and further notice of the foregoing Motion and consent to an extension of time as prayed for.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Weldon, H. E. Southerland. C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin,

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for Defendants H. M. Baum, A. R. Thomas and R. H. Letchman.

ORDER.

The foregoing Motion having been duly presented to the Court and the Court being of the opinion that the same should be granted,

It is Ordered, Adjudged and Decreed that the time for filing the record on appeal in this cause is hereby extended for an additional 50 days so that said record may be filed on any date that is not more than 90 days from the date of filing the first notice of appeal.

Done this 26 day of February, 1957.

H. H. GROOMS,
District Judge.

ORDER.

(Title Omitted.)

This date came the plaintiff and presented to the Court its motion for order to send original papers and exhibits to the Court of Appeals in lieu of copies thereof, and it appearing to the Court that the defendants in said cause have, by and through their respective attorneys, consented to said motion, and it further appearing to the Court that an order in accordance therewith should be entered,

It is Ordered, Adjudged and Decreed that the original exhibits offered and received in evidence in this cause with the exception of defendants' exhibits 1, 3 and 6 which are susceptible of being readily copied and included within the printed record, be sent by United States mail under separate cover to the Court of Appeals for the Fifth Circuit at the time of filing the final record in said cause and that upon conclusion of the consideration by the Court of Appeals of the matters presented therein said original exhibits be returned by United States Mail to this Court.

Defendants' exhibits 1, 3 and 6 are to be copied and included within the printed record filed in said cause and the originals thereof will be retained in this Court by the Clerk.

Done this 18th day of April, 1957.

SEYBOURN H. LYNNE,
District Judge.

CLERK'S CERTIFICATE.

United States of America,
Northern District of Alabama.

I, WILLIAM E. DAVIS, Clerk of the District Court of the United States for the Northern District of Alabama, Southern Division, do hereby certify that the foregoing pages numbered from one (1) to one thousand six hundred twenty-eight (1628), both inclusive, is a full, true, and correct transcript of the record on appeal in the Matter of Louisville & Nashville Railroad Company, a Corporation, Appellant, vs. J. M. Brown, Jr., et al., Appellees, as fully as the same appears of record and on file in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Court at Birmingham, in said District, on this the 19th day of April, 1957.

WILLIAM E. DAVIS,
(William E Davis),
(Seal) Clerk, U.S. District Court.

Office - Supreme Court, U.S.
FILED
FEB 26 1958
JOHN T. FEY, Clerk

LIBRARY
SUPREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. ...812

J. M. BROWN, JR., H. M. BAUM, A. R. THOMAS, J. B. OTTS, JR., WILLIAM F. PENNINGTON, OLIVER C. BREEDLOVE, HOWARD EUGENE ANDERSON, BRUCE BARNETT, M. L. HALL, J. M. WELDON, H. K. PARKER, W. L. GRISSOM, C. L. McCUTCHEON and R. H. LETCHMAN,
Petitioners and Appellees Below,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Respondent and Appellant Below.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

ERLE PETTUS, JR.,
Tenth Floor, Massey Building,
Birmingham 3, Alabama,
Attorney for Petitioners.

JACKSON, RIVES, PETTUS & PETERSON,
Tenth Floor, Massey Building,
Birmingham 3, Alabama,

R. MACEY TAYLOR,
Frank Nelson Building,
Birmingham 3, Alabama,
Of Counsel for Petitioners.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

INDEX.

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statutes	3
(a) Sec. 6 of Norris LaGuardia Act (Title 29, U. S. C. A., Sec. 106)	3
(b) Railway Labor Act [Title 45, U. S. C. A., Secs. 153 (i) and 156]	3–4
Statement of the Case	5
(a) Pleadings and Proceedings in Courts Below	5
(b) Statement of Facts	6
Basis of Federal Jurisdiction	11
Argument	12
Conclusion	21
Proof of Service	21
Appendix A—Opinion Below	23
Appendix B—Judgment Below	39

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Alabama Cartage Co. v. International B'hood, etc., 250 Ala. 372, 34 So. 2d 576, 2 A. L. R. 2d 1273	19
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Brotherhood of Railroad Trainmen etc. v. Chicago River and Indiana Railroad Company, 353 U. S. 30, 77 S. Ct. 635, 1 L. ed. 2d 622	15

Kingston Trap Rock Co. v. International Union, etc., 126 N. J. Eq. 570, 19 A. 2d 661 19

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Marvel Banking Co. v. Teamsters Union, 5 Wash. 2d 346, 105 P. 46 19

Mastro Plastics Corp. et al. v. National Labor Relations Board, 350 U. S. 270, 100 L. ed. 309, 76 S. Ct. 349 19

Norfolk & Portsmouth Belt Line RR. Co. v. Brotherhood, 248 F. 2d 34 .....15, 20

Order of Railway Conductors v. Pitney, 326 U. S. 561, 90 L. ed. 318, 66 S. Ct. 322 17

Order of Railway Conductors v. Southern Rwy. Co., 339 U. S. 225, 94 L. ed. 811, 70 S. Ct. 585..... 17

Russell v. International Union, etc., 258 Ala. 615, 64 So. 2d 384 .....5, 14

Slocum v. Del. L. & W. R. Co., 339 U. S. 239, 94 L. ed. 795, 70 S. Ct. 577 .....5, 17

United Brotherhood of Carpenters v. United States, 330 U. S. 395, 67 S. Ct. 775, 91 L. ed. 973 .....12, 13

United Construction Workers v. Laburnum Construction Corp., 347 U. S. 656, 98 L. ed. 1025, 74 S. Ct. 833 .....5, 14

Statutes Cited.

Title 28, U. S. C. A., Sec. 1254 (1) 2

Title 29, U. S. C. A., Sec. 106 ..... 2, 3

Title 45, U. S. C. A., Sec. 153 (i) 4

Title 45, U. S. C. A., Sec. 156 .....3, 4, 19

Textbook Cited.

Labor Contract—Right to Strike, 2 A. L. R. 2d 1278.. 19

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. .....

J. M. BROWN, JR., H. M. BAUM, A. R. THOMAS, J. B. OTTS, JR., WILLIAM F. PENNINGTON, OLIVER C. BREEDLOVE, HOWARD EUGENE ANDERSON, BRUCE BARNETT, M. L. HALL, J. M. WELDON, H. K. PARKER, W. L. GRISSOM, C. L. McCUTCHEON and R. H. LETCHMAN,
Petitioners and Appellees Below,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Respondent and Appellant Below.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

The above named petitioners (hereinafter referred to as defendants) pray that a writ of certiorari issue to review the judgment in favor of the respondent (hereinafter referred to as plaintiff) of the United States Court of Appeals for the Fifth Circuit entered in this case.

OPINIONS BELOW.

There was no opinion of the United States District Court for the Northern District of Alabama. The opinion of the Court of Appeals (infra, Appendix A, pp. 23 to 38) has not been reported as of the date of preparation of this petition.

JURISDICTION.

The judgment of the Court of Appeals was entered on January 24, 1958 (infra, Appendix B, p. 39). No application for rehearing was made to the Court of Appeals. The jurisdiction of this Court is invoked under the provisions of Title 28, U. S. C. A., Sec. 1254 (1).

QUESTIONS PRESENTED.

QUESTION 1.

Where a labor organization of railroad employees and members thereof, are participating or interested in a labor dispute, involving a carrier and some of the members of such organization, resulting, without authority of such organization, in a walkout of some 2500 railroad employees, including thirteen of the members of such organization and a member of another organization of railroad employees, who as individual defendants in a common law conspiracy action instituted by plaintiff carrier in the Federal District Court are charged with responsibility for unlawful acts, are such individual defendants so charged with responsibility for unlawful acts entitled to the benefit of Sec. 6 of the Norris-LaGuardia Act (Title 29, U. S. C. A., Sec. 106)?

QUESTION 2.

Where defendant railroad employees walkout or strike as a result of a labor dispute with plaintiff carrier prior to the submission of such dispute to the jurisdiction of the National Railroad Adjustment Board, is such walkout or strike "illegal" under the Railway Labor Act?

QUESTION 3.

Does the Federal District Court have jurisdiction under the Railway Labor Act, without prior resort to the National Railroad Adjustment Board, to construe a collective bargaining agreement between plaintiff carrier and the

Brotherhood of Locomotive Firemen & Enginemen (BLF&E), a railroad labor organization, in order to determine the following separate questions under such agreement:

(a) Whether defendant railroad employees covered by such agreement have procured a breach thereof by failing and refusing to follow "specified procedure" as provided in such agreement; and,

(b) Whether plaintiff carrier breached such agreement and the Railway Labor Act by abolishing the outside hostler helper positions without giving the statutory 30 days notice as provided in Title 45, U. S. C. A., Sec. 156.

STATUTES.

Sec. 6 of the Norris-LaGuardia Act reads as follows:

> "§ 106. Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents.
>
> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."
>
> Title 29, U. S. C. A., Sec. 106.

Pertinent sections of the Railway Labor Act read as follows:

> "§ 153. National Railroad Adjustment Board—Establishment; composition; powers and duties; divisions; hearings and awards.
>
> "• • • (i) The disputes between an employee or group of employees and a carrier or carriers growing

out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending or unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes. * * * "

Title 45, U. S. C. A., Sec. 153 (i).

"§ 156. Procedure in changing rates of pay, rules, and working conditions.

"Carriers and representatives of the employees shall give at least 30 days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Title 45, U. S. C. A., Sec. 156.

STATEMENT OF THE CASE.

(a) Pleadings and Proceeding in Courts Below.

Plaintiff railroad sued its defendant employees in a civil action filed on October 25, 1955, in the United States District Court for the Northern District of Alabama for $250,000 damages (R. 1). Jurisdiction was invoked on the basis of diversity of citizenship and an amount in controversy in excess of $3,000.00. The trial court, on motion of defendants, dismissed the original complaint, consisting of three counts, on the theory that the National Railroad Adjustment Board under the Railway Labor Act as construed in **Slocum v. Del. L. & W. R. Co.**, 339 U. S. 239, 94 L. ed. 795, 70 S. Ct. 577, had primary jurisdiction to interpret the provisions of the Railway Labor Act and the agreement of BLF&E with plaintiff (Firemen's Agreement, Deft. Ex. 5, original exhibit) necessarily involved in those counts (R. 24-27, 50-51). Plaintiff thereupon filed Amended Count Three, a common-law count for damages, charging the defendant employees with a conspiracy to interfere with plaintiff's railroad business by causing "other employees of plaintiff, by means of intimidation or threat of force or violence, not to perform their duties with plaintiff" thereby causing a work stoppage on October 23, 1955, to plaintiff's damage (R. 51, 52). The trial court sustained Amended Count Three against defendants' motion to dismiss on the authority of **United Construction Workers v. Laburnum Construction Corp.**, 347 U. S. 656, 98 L. ed. 1025, 74 S. Ct. 833, and **Russell v. International Union, etc.**, 258 Ala. 615, 64 So. 2d 384, which had been cited in previous rulings by the Court (R. 47, 105). After a trial in the Federal District Court on Amended Count Three, lasting six days, the jury returned a verdict for each defendant and appropriate judgments were entered on the verdicts (R. 1525-1530). Plaintiff appealed to the United States Court of Appeals for the Fifth Circuit following the denial of its motion for

new trial (R. 1559, 1560). The Court of Appeals reversed and remanded the case to the District Court for a new trial on Counts Two and Three of the original complaint and Amended Count Three (infra, Appendix A). Count Two is based on the alleged wrongful interference by defendants with the collective bargaining agreement between plaintiff railroad and BLF&E, to which organization thirteen of the defendants belong (R. 3, 4, 314, 883, 979, 1001, 1085, 1114, 1168, 1234, 1253, 1305, 1329, 1374, 1396). Count Three is a common-law conspiracy action for damages for causing a work stoppage similar to Amended Count Three except that there is no allegation of threat of force or violence or intimidation of other employees (R. 4-5). Both Counts Two and Three also contain reference to the same work stoppage referred to in Amended Count Three (R. 1-5, 51). Each Count is quoted verbatim in the opinion of the Court of Appeals (infra, Appendix A).

(b) **Statement of Facts.**

(1) **Events Preceding Walkout of October 23, 1955.**

The walkout or strike of plaintiff's railroad employees, referred to in each Count of the complaint, commenced at the Boyles Yard at Birmingham, Alabama, about 9:00 P. M. Sunday, October 23, 1955 (R. 1344). Walkouts of plaintiff's employees also occurred at the yards at Decatur, Alabama, on October 24, 1955, and Montgomery, Alabama, on October 25, 1955 (R. 270, 672, 678). The walkouts, which involved about 2,500 employees, ended Wednesday night, October 26, 1955 (R. 1346, 1352).

The opinion of the Court of Appeals oddly enough omits mention of any facts regarding the labor dispute resulting in the walkout which commenced at the Boyles Yard on the fifth day after plaintiff posted on its bulletin board the following notice:

"Defendants' Exhibit 1.

Louisville and Nashville Railroad Co.
Office of Master Mechanic

Bulletin #135

Boyles, Ala., October 19, 1955.

S&NA Division

All Outside Hostler Helpers:

The following Outside Hostler Helpers' positions will be abolished at the end of shift Sunday, Oct. 23, 1955:

Ed Dorrity—Seniority Date 8-27-22, Second Shift.

W. L. Grissom—Seniority Date 9-30-25, First Shift.

C. L. McCutchen—Seniority Date 7-31-41, Third Shift.

J. B. Quiggins, M. M.

JBQ—ewb

Cy—Mr. Ed Dorrity
Mr. W. L. Grissom
Mr. C. L. McCutchen
Mr. J. B. Otts, L. C.
All Roundhouse Foremen"

(R. 1471, 1472.)

The outside hostler helpers, who perform similar duties to those of firemen, are covered by the Firemen Agreement (Deft. Ex. 5, R. 1330, 1573). The notice abolishing the outside hostler helper positions occasioned widespread dissatisfaction and comment among the employees (R. 223, 538, 1019, 1277). Hostlers, who perform duties similar to engineers, consider it dangerous to operate engines without the assistance of competent hostler helpers (R. 230, 231, 894, 895, 920, 1049, 1050). Employees feared that if the

railroad company could abolish a craft covered by such an agreement on a five day notice, any craft could be so abolished (R. 449).

Rumors of an impending walkout commenced shortly after the abolition notice was first published and continued until the walkout occurred (R. 216, 408, 410, 519, 722). Ben Mitchell, Trainmaster, and other railroad officials were alerted for a strike on Sunday, October 23, 1955 (R. 410). Contrary to his usual custom, Mitchell remained on duty at the Boyles Yard Sunday afternoon and night until the walkout occurred (R. 309, 313, 333). Acting on instructions, the Engine Dispatcher called no train crews for any train later than 8:55 P. M. This action was at variance with the usual procedure of calling crews for trains usually scheduled for later runs (R. 295, 301, 302).

Defendants J. B. Otts, Jr., as Local Chairman of the Brotherhood of Locomotive Firemen and Enginemen, objected to the abolition of the hostler helper positions to plaintiff's master mechanic and was informed that the decision had been made to replace the outside hostler helpers with laborers (R. 1331, 1333). Upon being so rebuffed, defendant Otts referred the outside hostler helper problem to his General Chairman at Louisville, Kentucky, Mr. Jake Paschall (R. 1334). A letter from Mr. Paschall to plaintiff protesting plaintiff's action abolishing the hostler helper positions was read at a Local Lodge Meeting of the BLF&E on Friday, October 21, 1955 (R. Deft. Ex. 6, 1334, 1335, 1473). Following the Lodge Meeting, some hostler helpers and a few others decided to hold a meeting at defendant Parker's house on Sunday, October 23, 1955, to discuss ways and means of handling the case involving the abolition of the hostler helper craft at Birmingham (R. 1336).

About twenty men, most of whom were firemen, attended the Parker house meeting on Sunday, October 23, 1955, at

about 4:30 P. M. The abolition of the hostler helper jobs was discussed at the meeting in small, disorganized groups (R. 252, 288, 1170, 1204, 1341, 1342, 1378, 1380). No one called the meeting to order and there was no one in charge (R. 1170, 1380). There was a conflict in the testimony as to whether the possibility of a walkout was discussed. Some testified that there had been talk of a walkout (R. 182, 245). Most of the men denied hearing any discussion of a walkout or strike and testified that the consensus of the meeting was to handle the hostler helper dispute as a grievance (R. 1279, 1291, 1293).

(2) The Walkout of October 23, 1955 and Subsequent Events.

The walkout occurred at the Boyles Yard sometime around 9:00 on the night of October 23, 1955 (R. 926). Ben Mitchell, Trainmaster, testified that defendant Baum appeared at the office in company with Tommy Davis and C. A. Myrick in street clothes carrying small sticks at about 9:00 o'clock and yelled, "We're shutting the railroad down. Everybody go home" (R. 311). Defendant Baum and Mr. Davis both denied participating in any such activity (R. 1173, 1425). Other witnesses in the office with Mitchell testfied that they did not see any defendant present on the occasion concerning which Mitchell testified although one or more unidentified individuals yelled, "All right, let's go" (R. 858, 859, 1156). Defendant Pennington, who was on duty in the Boyles Yard as foreman of a switch crew, and others working in the yard that night, heard unidentified voices in the dark calling out that there was "labor trouble" and "let's go" (R. 423, 925, 926, 927).

While the walkout was in progress, defendant Otts, accompanied by Mr. N. B. Cunningham, Vice Chairman of the General Grievance Committee of the BLF&E conferred with Mr. Kirschner, plaintiff's Division Superintendent, concerning the walkout on Tuesday, October 25,

1955 (R. 1349, 1350). Defendant Otts testified that Mr. Kirschner was informed: "in our opinion that if he would restore the outside hostler helper jobs that the men would go back to work" (R. 1350). At another conference the next day—Wednesday, October 26, 1955—Mr. Cunningham and defendant Otts met with the railroad officials with a view to getting the men back to work and Mr. Cunningham offered his "good offices" to get them back (R. 1351). Plaintiff's employees returned to work that night (R. 1352).

The only employees who testified to being subjected to any threats or intimidation at anytime during the walkout may be briefly summarized by locality as follows:

Birmingham.

Ben Mitchell, Trainmaster at Boyles, was the only employee who claimed that he had been touched by any defendant. Mitchell testified that on Monday, October 24, 1955, at about 8:30 A. M., defendant Thomas pushed him "back a little bit" thereby preventing his entry to plaintiff's office at Morris Avenue (R. 318). Later in the morning, Mitchell went through the Boyles Yard to check some waybills after talking to defendant Thomas at the gate (R. 381, 389). Defendant Thomas denied making any threats or intimidative demonstrations toward Mitchell on any occasion (R. 1032, 1033, 1034, 1035, 1036, 1039).

Lee Thomas, a colored fireman, testified that defendant Weldon boarded a passenger engine at the L&N Station at Birmingham on which he was riding at 11:30 P. M., October 23, 1955, and made threatening gestures toward him with a knife (R. 571). Defendant Weldon denied the accusation (R. 1004).

Decatur.

Mr. Petty, Chief Clerk, Mr. Long, Rate Clerk and Mr. Smith, Cashier at the Freight Office at Decatur, Alabama,

testified that defendant Pennington in the late afternoon of October 24, 1955, had made threats to them and had forbade them to return to work the next day (R. 266, 564, 593, 594, 596). Messrs. Petty, Long and Smith had returned to the Freight Office the following day and spent one-half hour there. No one else reported and they left (R. 601). Mr. Petty stated that there was no violence whatever at Decatur (R. 566).

Montgomery.

T. B. Wilder, one of plaintiff's locomotive engineers, testified that he had been prevented from working at Montgomery, Alabama, on October 25, 1955, as a result of threats made by J. B. Byram and H. D. Dismukes, defendants who were not served in time for trial (R. 633, 634). Neither Byram nor Dismukes testified. The walkout at Montgomery was peaceful (R. 678).

Plaintiff offered evidence of damages on the theory of loss of profits and extraordinary expenses occasioned by the walkout (R. 813, 814, 823, 833, 1573, Pl. Exs. 2 and 3). Defendants offered evidence that none of plaintiff's 2500 employees participating in the walkout were paid by plaintiff during the walkout and hence the savings in wages precluded any loss of profits and more than offset extraordinary expenses (R. 936, 1006, 1168, 1211, 1239, 1260, 1313, 1347).

BASIS OF FEDERAL JURISDICTION.

Federal jurisdiction in the Court of the first instance, the United States District Court for the Northern District of Alabama, is based on diversity of citizenship and an amount in controversy in excess of $3,000.00.

ARGUMENT.

(a) ARGUMENT—QUESTION 1: The Court of Appeals Failed to Follow United Brotherhood of Carpenters v. United States, 330 U. S. 395, in Holding Sec. 6, Norris-LaGuardia Act Not Applicable to Defendants.

The Court below held that the defendants were not entitled to the benefit of Sec. 6 of the Norris-LaGuardia Act because they were individuals engaging in "an illegal strike in which a labor organization of which they are members is not interested." The so-called "illegal strike" (a misnomer dealt with hereafter) was the consequence of a labor dispute in which the BLF&E was interested and participating. Thirteen of the defendants belonged to that organization while the fourteenth was a member of the Brotherhood of Railroad Trainmen. While it is true that the BLF&E did not authorize any strike or walkout, nevertheless, that organization was participating or interested in the labor dispute involved in the walkout, by representing its outside hoslter helper members in protesting the abolition of their positions and in having one of its Vice Presidents confer with plaintiff's officials about the labor dispute involved in an effort to get the men back to work (Deft. Ex. 6, 1334, 1473, 1349-1351). The evidence, therefore, shows union participation or interest in a labor dispute—if that is the requirement of Sec. 6 of the Norris-LaGuardia Act. We submit, however, that the correct interpretation of that section only requires participation or interest in a labor dispute by either the union, or an officer or member of the union. The holding of this court in **United Brotherhood of Carpenters v. United States**, 330 U. S. 395, 67 S. Ct. 775, 91 L. ed. 973, is that Sec. 6 of the Norris-LaGuardia Act applied to "organizations and their members alike" and that members involved in a conspiracy even though acting "without association au-

thority" were nevertheless entitled to the protection of Sec. 6. The Court below attempted to distinguish the **Carpenters** case on the ground that in that case the protection was available to members of the Brotherhood which was a participant in the alleged conspiracy, whereas the protection was not available in the instant case because no union is a party (infra, Appendix A). This attempted distinction is in the teeth of the decision of this Court in the **Carpenters** case expressed as follows:

> "'It is suggested that since "conscious participation" was required for conviction by the instructions given, error as to the individual defendants cannot be found under any theory of the rule of § 6. But we think that failure to instruct the jury on the imputation of guilt from the acts of others as limited in labor disputes by § 6 affects the individuals as well as the associations. **The section covers organizations and their members alike. Individuals, without association authority, may be guilty of such a conspiracy as this under the Sherman Act, but under § 6 they will not be guilty merely because they are members or officers of a guilty association. Nor are individuals guilty because of acts of other individuals in which they did not participate, or which they did not authorize or ratify.** Although an illegal conspiracy under the Sherman Act was proven at the trial, the individuals are entitled to have their participation weighed by a jury under an instruction explaining the circumstances under which § 6 permits acts of other individuals or of associations or of organizations in labor disputes to create personal liability. • • • '" (Emphasis supplied.)
>
> **United Brotherhood of Carpenters v. United States,** 330 U. S. 395, 67 S. Ct. 775, 91 L. ed. 973, at pages 986, 987.

The Court of Appeals failed to follow the decision of this Court in the **Carpenters** case.

Applying Sec. 6 of the Norris-LaGuardia Act to the defendants in this case, the evidence was insufficient to prove them guilty of preventing fellow employees from working through violence or intimidation and hence the proof failed to bring the case tried under Amended Count Three which was founded upon **United Construction Workers v. Laburnum Construction Corp.**, 347 U. S. 656, 74 S. Ct. 833, 98 L. ed. 1025, and **Russell v. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America**, 258 Ala. 615, 64 So. 2d 384, second appeal: 264 Ala. 456, 88 So. 2d 175; certiorari granted 352 U. S. 915, 77 S. Ct. 213, 1 L. ed. 1211. On this ground and others assigned in a motion timely filed in the trial court defendants were entitled to a directed verdict.

(b) ARGUMENT—QUESTION 2: **The Court of Appeals Erroneously Held That the Walkout or Strike of Defendant Railroad Employees Was an "Illegal Strike" Under the Railway Labor Act, Contrary to Manion v. Kansas City Terminal Railway Company, 353 U. S. 927.**

The defendants, together with 2500 fellow railroad employees, walked out in a labor dispute over the arbitrary abolition of outside-helper positions by plaintiff. Without submission of the labor dispute to the National Railroad Adjustment Board (in fact within less than forty-eight hours after the walkout commenced) plaintiff instituted the instant damage suit against defendants in the Federal District Court upon one theory, among others, that the strike was illegal under the Railway Labor Act.

While there is no express provision of the Railway Labor Act providing that a strike of railroad employees is

illegal, this Court has held in **Brotherhood of Railroad Trainmen etc. v. Chicago River and Indiana Railroad Company,** 353 U. S. 30, 77 S. Ct. 635, 1 L. ed. 2d 622, that a Federal District Court may enjoin a strike over a labor dispute **which has been submitted to the National Railroad Adjustment Board under the Railway Labor Act.** Some two weeks after the **Chicago River** case, this Court held that a state court could not enjoin a strike by railroad employees as a violation of the Railway Labor Act prior to the submission of the labor dispute involved to the National Railroad Adjustment Board under the Railway Labor Act. **Manion v. Kansas City Terminal Rwy. Co.,** 353 U. S. 927, 77 S. Ct. 706, 1 L. ed. 2d 722.

The Court of Appeals was of the opinion that the instant case did not "fall squarely into the pattern" of either the **Chicago River** or **Manion** cases, but "in logic it much more resembles **Chicago River** than **Manion.**" The conclusion was accordingly reached that the strike was "illegal." We submit that, on the contrary, the instant case falls squarely within **Manion** because there is no prohibition, express or implied, in the Railway Labor Act of a strike prior to **actual** submission of the labor dispute involved to the National Railroad Adjustment Board. Under **Manion** therefore, the walkout or strike in the instant case is not affected by the Railway Labor Act because the labor dispute causing the strike was not submitted to the National Railroad Adjustment Board.

Another indication of the failure of the Court of Appeals fully to appreciate the holding in **Manion** is the citation of **Norfolk & Portsmouth Belt Line RR. Co. v. Brotherhood,** 248 F. 2d 34, as being as "similar in all respects to our conclusion". The vital distinction is that in the case cited the labor dispute had been submitted to the National Railroad Adjustment Board so that in granting the injunction against a strike **Chicago River** was direct authority, whereas

in the **Manion** case, of course, the dispute had not been submitted to the Adjustment Board.

One further comment concerning **Chicago River** is appropriate. It does not follow from **Chicago River**, as reasoned by the Court below, that both an injunction and a common law conspiracy action are permissible in case of a strike over a labor dispute submitted to National Railroad Adjustment Board. The final question as stated in the opinion of **Chicago River** was whether compliance with the provisions of the Railway Labor Act could be compelled "to the extent of enjoining a union from striking to defeat the jurisdiction of the Adjustment Board". There is no general language of "illegal strike" used in the **Chicago River** opinion. Upholding the jurisdiction of the National Railroad Adjustment Board of disputes pending before it is the key to **Chicago River.** That purpose is no more served by permitting a common law conspiracy action in the Federal District Court based on a strike over a dispute actually before the Adjustment Board than is the strike itself. Injunction is the remedy to preserve the status quo without disruption either by a strike or a damage suit over the strike. The right to strike cannot be said to be "taken away" by the Railway Labor Act, as held by the Court of Appeals in the instant case, but only subject to restraint by injunction where the dispute is actually pending before the National Railroad Adjustment Board to the end that its jurisdiction remains unimpaired. An injunction to restrain a strike over a dispute submitted to the National Railroad Adjustment Board is consistent with the recognition of the paramount jurisdiction of the Board over railroad labor disputes submitted to it whereas a common law conspiracy action based on a strike involving a dispute submitted to the Board is in conflict with such paramount jurisdiction of the Board because many common questions in connection with such dispute are necessarily involved. In the injunction action

there is no possible conflict between the Federal District Court and the National Railroad Adjustment Board whereas in the common law conspiracy action conflict between the Court and the Board is inevitable. To countenance a common law conspiracy action would encourage a "race of diligence" by the railroad to seek the Court as a forum for airing labor disputes with its employees instead of submitting same to the National Railroad Adjustment Board. Such practice was condemned in **Order of Railway Conductors v. Southern Railway Company**, 339 U. S. 225, 94 L. ed. 811, 70 S. Ct. 585. The effect of permitting a common law conspiracy action based on a strike in such a situation would, therefore, be in derogation of the jurisdiction of the National Railroad Adjustment Board instead of upholding that jurisdiction. For these reasons, the Court of Appeals not only failed to follow the decision of this Court in the **Manion** case but completely missed the true spirit of **Chicago River** which it purported to follow. From any standpoint, the decision should be reviewed and corrected in an important field of federal law.

(c) ARGUMENT—QUESTION 3: **The Court of Appeals Erroneously Held That the Federal District Court Had Primary Jurisdiction to Construe the Firemen's Agreement Without Prior Resort to the National Railroad Adjustment Board Under the Railway Labor Act Contrary to Slocum.**

It is surprising that the Court below held that the Firemen's Agreement (Deft. Ex. 5) upon which Count Two is based, must be construed in the first instance by the Federal District Court instead of the National Railroad Adjustment Board contrary to **Slocum v. Del. L&W R. Co.**, 339 U. S. 239, 94 L. ed. 795, 70 S. Ct. 577; **Order of Railway Conductors v. Southern Rwy. Co.**, 339 U. S. 225, 94 L. ed. 811, 70 S. Ct. 585; and **Order of Railway Conductors v. Pitney**, 326 U. S. 561, 90 L. ed. 318, 66 S. Ct. 322. In the

opinion of the Court below it is stated: "Count Two alleged that defendants were parties to an agreement between their brotherhood and appellant * * *" while elsewhere it is stated in the opinion that: "Count Two is essentially an action for wrongful interference with contractual rights of others * * *" (infra, Appendix A). Regardless of which of these divergent statements is accurate, it is manifest that under Count Two a construction of the Firemen's Agreement (Deft. Ex. 5) is necessary to determine, among other questions, the following:

(a) Are defendant members of the Brotherhood parties to the agreement so as to be liable directly for any alleged breach thereof?

(b) What is the meaning of the provisions of said agreement with reference to settlement of any grievances or disputes "in a specified manner consistent with the Railway Labor Act"?

(c) Did the defendants cause or procure a breach of the agreement by failing to follow such "specified procedure"?

We submit that the Federal District Court cannot try the case alleged under Count Two without construing the Firemen's Agreement (Deft. Ex. 5) to answer these questions. Under the decisions of this Court, the National Railroad Adjustment Board has primary jurisdiction to construe such agreements. The holding of the Court below as to Count Two was clearly a departure from the rule announced in **Slocum** and other cases of this Court.

In this same vein, however, there is another question of construing such Agreement which applies to Count Three as well as Count Two. Defendants have taken the position consistently that plaintiff first violated such Agreement and the Railway Labor Act in connection with the labor dispute involving the outside hostler helpers. This issue

is pertinent while the right to strike is recognized in Alabama,

Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810;

the right may be abrogated or restricted by a provision in a collective bargaining agreement.

Alabama Cartage Co. v. International B'hood, etc., 250 Ala. 372, 34 So. 2d 576, 2 A. L. R. 2d 1273.

However, any such contractual restriction on the right to strike is removed under generally recognized principles in the event the employer first breaches the contract containing such restriction.

Mastro Plastics Corp. et al. v. National Labor Relations Board, 350 U. S. 270, 100 L. ed. 309, 76 S. Ct. 349;

Kingston Trap Rock Co. v. International Union, etc., 126 N. J. Eq. 570, 19 A. 2d 661;

Marvel Banking Co. v. Teamsters Union, 5 Wash. 2d 346, 105 P. 46.

Anno: **Labor Contract—Right to Strike**, 2 A. L. R. 2d 1278.

Therefore, in the instant case if plaintiff first breached such Agreement and the Railway Labor Act, any restriction, express or implied, on defendants' right to strike either by such Agreement or the Railway Labor Act would be removed. Defendants have maintained that plaintiff first violated the Firemen's agreement (Deft. Ex. 5) and the Railway Labor Act by failing to give thirty days written notice of its intention to change the agreement affecting rates of pay, rules or working conditions by the abolition of the hostler helper positions. See Title 45, U. S. C. A., Sec. 156. The abolition of the outside hostler helper positions patently involved questions relating to

both rates of pay and working conditions. To the extent of replacement by laborers the question arises as to whether such laborer is in fact an outside hostler helper for pay purposes and seniority under the folowing provision of the Firemen's Agreement:

> "b. The term 'helper' applies to employees when used to assist outside hostlers" (p. 111 of Firemen's Agreement, Deft. Ex. 5).

To the extent of no replacement the increased hazard involved to the hostler and other employees necessarily encompasses working conditions. In this case, the problem is not the abolition of a yard or the failure to run an engine. The engine is being run and the question is the right of plaintiff to remove men from the engine who are covered by the Firemen's Agreement (Deft. Ex. 5) under the express definition of "helpers". Despite the language of such Agreement, the plaintiff has taken the position that the abolition of the outside hostler helper positions is not covered thereunder. The resolution of this type of question is a matter within the peculiar competence of the National Railroad Adjustment Board involving of necessity wide knowledge and familiarity with the practice, conditions and customs of the railroad industry.

The problem here of whether the abolition of the outside hostler helper positions is covered in the Firemen's Agreement (Deft. Ex. 5) is not unlike the coverage question in the contract under consideration in **Norfolk & Portsmouth Belt Line R. R. Co. v. Brotherhood, etc.**, 248 F. 2d 34.

In that case, there was some question as to whether the agreement covered the establishment of an additional point for reporting and relief and it was held that an injunction properly should be issued to permit a decision by the National Railroad Adjustment Board to whom the

dispute had been submitted. The opinion of the Court proceeds on the assumption—which is in fact without doubt—that the Adjustment Board is the proper agency to interpret the contract for coverage.

Likewise, in the instant case, there can be no doubt that under the Slocum rule, the questions involving construction of the Firemen's Agreement (Deft. Ex. 5) under Counts Two and Three should be determined by the National Railroad Adjustment Board and not by the Federal District Court in the first instance.

CONCLUSION.

The decision of the Court below involves important questions of the application of federal law in connection with the Railway Labor Act and the Norris-LaGuardia Act to employees in the railroad industry participating in a labor dispute with a carrier. The decision in several instances is at odds with prior decisions of this Court. Certiorari should be granted to review the decision of the Court below.

Respectfully submitted,

ERLE PETTUS, JR.,
Tenth Floor, Massey Building,
Birmingham 3, Alabama,
Attorney for Petitioners.

JACKSON, RIVES, PETTUS & PETERSON,
R. MACEY TAYLOR,
Of Counsel.

Proof of Service.

I, Erle Pettus, Jr., attorney for Petitioners and a member of the Bar of the Supreme Court of the United States, hereby certify that on this date I served a copy of the

foregoing petition for certiorari on the respondent, Louisville & Nashville Railroad Company, by mailing a copy thereof, first class postage prepaid, to its Attorney of Record, James A. Simpson, Esq., Security-Exchange Building, 4th Avenue and 20th Street, North, Birmingham, Alabama.

This .... day of February, 1958.

.....

Erle Pettus, Jr.,
Tenth Floor, Massey Building,
Birmingham, Alabama,
Attorney for Petitioners.

APPENDIX A.

Opinion.

In the
UNITED STATES COURT OF APPEALS
For the Fifth Circuit.

No. 16632.

Louisville & Nashville Railroad Company,
Appellant,

versus

J. M. Brown, Jr., et al.,
Appellees.

Appeal from the United States District Court for the Northern District of Alabama.

(January 24, 1958.)

Before Borah, Tuttle and Cameron, Circuit Judges.

Tuttle, Circuit Judge: This is an appeal by the Louisville and Nashville Railroad Company from a judgment for the fourteen defendants, its employees, in a suit it had filed for damages resulting from their alleged fomenting of a strike that shut down for three days the plaintiff's railroad operations in Jefferson County, Alabama (including the Birmingham yards). Appellant railroad did not seek an injunction against the defendants. No labor organization is a party to the litigation. The alleged strike, if such it was, was charged in the complaint to be the result of the actions of the individual defendants acting alternatively singly or in concert, not authorized by any railroad brotherhood.

The complaint was in three counts. Each of them was short and to the point.[1] Count One asserts that defendants

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[1] For adequate consideration of the legal issues raised it is deemed necessary that the complaint be set out in full:

"Comes the plaintiff in the above styled cause and exhibits this its complaint in said action as follows:

"1. The plaintiff is a corporation organized and existing under the laws of the State of Kentucky and a resident citizen of said State. Plaintiff is engaged as a common carrier by rail of Interstate Commerce and of the United States mail in and through the Northern District of Alabama in which district it does business by Agent. The defendants are each over the age of 21 years and are resident citizens of Jefferson County, Alabama.

"The amount in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00 and the jurisdiction of this Court is rested upon diversity of citizenship and the amount in controversy. Jurisdiction is further rested as an independent basis thereof upon the existence of a federal question being involved in the issues between the parties as herein averred.

"2. Plaintiff claims of the defendants, separately and severally, the sum of $250,000.00 damages and hereinafter sets forth in separate counts each of its causes of action as follows:

"Count One.

"3. Plaintiff avers that defendants are employees of the plaintiff and that there is imposed upon them and each of them by the provisions of 45 U. S. C., Sections 151, 152, et seq., the duty to exert every reasonable effort to settle all disputes between the plaintiff and its employees whether arising out of the application of previously made agreements or otherwise, in order to avoid any interruption of interstate commerce or of the operation of the business of the plaintiff as a carrier of interstate commerce.

"4. Plaintiff further avers that the defendants, separately and severally, have on or about October 23, 1955, breached and utterly failed to discharge said statutory duty in that they wilfully refused to exert any effort to settle an existing dispute but did on the contrary on or about said date without cause and excuse and without notice to plaintiff, wilfully and maliciously cause a shut-down or work stoppage on the lines of the plaintiff in Jefferson County, Alabama, resulting in a complete paralysis of plaintiff's operation as a common carrier of interstate commerce in said county and surrounding areas and that as a proximate result thereof plaintiff has been injured in the amount of, to-wit, $250,000.00 for which plaintiff makes claim of the defendants herein.

"Count Two.

"5. Plaintiff avers that prior to October 23, 1955 it had entered into an agreement concerning wages, hours, working conditions

were employes and that as such they were charged by the provisions of the National Railway Labor Act, 45 U. S. C. A., §§ 151, 152 et seq., with the duty of exerting all reasonable effort to settle all disputes between themselves and their carrier employer in order to avoid interruptions

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and other matters relating to conditions of employment of certain of its employees among whom were these defendants with a labor organization of which the defendants were on said date and prior thereto members and that the defendants had knowledge of said agreement and the terms thereof. Plaintiff avers that according to the provisions of said agreement all grievances or disputes were to be settled in a specified manner consistent with the Railway Labor Act.

"And plaintiff further avers that on or about said date, the defendants conspired to and in combination did wilfully and maliciously cause or procure a breach of said agreement between plaintiff and the said labor organization in that they did on the occasion of a dispute or grievance within the scope of said agreement fail and refuse to follow specified procedure and did on the contrary render the same impossible in that they did without notice to plaintiff and without legal cause undertake to force plaintiff to yield and forego its right to have such dispute or grievance settled as provided in said agreement and instead to submit without arbitration or hearing to the arbitrary demands of the defendants and that in furtherance of said illegal and wrongful design they did wilfully and maliciously cause a shut-down or work stoppage on the lines of the plaintiff resulting in a complete paralysis of the operations of the plaintiff as a common carrier of interstate commerce in Jefferson County, Alabama, and that the plaintiff was damaged thereby as a proximate result thereof in the amount of $250,000.00 for which plaintiff herein claims damages.

"Count Three.

"6. Plaintiff avers that on, to-wit, October 23, 1955 it was engaged in the lawful business of a common carrier of interstate commerce operating in Jefferson County, Alabama, where it had a right to be and that it was conducting its said operation in a lawful manner. Plaintiff further avers that on or about said date, the defendants did enter into a conspiracy or combination for the purpose of hindering, delaying and preventing the plaintiff from carrying on its lawful business as a common carrier of interstate commerce in that they did wilfully and maliciously and without excuse cause a shut-down or work stoppage of the plaintiff's railroad lines resulting in a complete paralysis of the operations of the plaintiff as a common carrier of interstate commerce in Jefferson County, Alabama, and as a proximate consequence thereof, plaintiff has been damaged in the amount of $250,000.00 for which it claims damages from the defendants."

of interstate commerce; that they breached this "statutory duty" in that they "wilfully and maliciously" caused a shutdown or work stoppage on appellant's lines in stated areas of Alabama to appellant's damage, amounting to $250,000.00.

Count Two alleged that defendants were parties to an agreement between their brotherhood and appellant covering their employment and that of all the members of the brotherhood, and that under its terms all grievances or disputes were to be settled through grievance procedures; that defendants conspired to, and in combination did, wilfully and maliciously cause a breach of the agreement by refusing to follow the specified procedure on the occasion of a dispute or grievance, but rendered the agreed procedure impossible by undertaking to force appellant to yield to their demands and interfered with the contractual relations between appellant and its 2500 employes by wilfully and maliciously causing a shutdown or work stoppage on appellant's railroad in Jefferson County, Alabama, to the same damage of appellant.

The Third Count, as finally construed by the Court, without relying on either the Federal Act or the employment agreement, simply alleged that defendant employes entered into a conspiracy in Jefferson County, Alabama, for the purpose of hindering and preventing plaintiff's interstate commerce carrier from carrying on its lawful business, and that they did so by wilfully, maliciously and without cause, forcing a shutdown of plaintiff's operations, damaging plaintiff in the sum of $250,000.00.

Defendants filed motions to dismiss each count for failure to state a claim on which relief could be granted, and on the ground that the District Court had no jurisdiction, by reason of the availability of an administrative remedy under the Railway Labor Act, supra. The court sustained these motions to the first two counts on the latter ground.

It held Count Three "defective" and sustained the motion, allowing plaintiff the right to file an amendment to this count.

The amended Count Three,[2] on which trial to a jury was subsequently had, differed from the original only in that it charged that in causing the other employes not to perform their duties with plaintiff, defendants did so "by means of intimidation or threat of force or violence." As thus amended the count was permitted to stand.

On its appeal here the railroad company assigns as error the ruling of the trial court in dismissing the three original counts and thus "requiring" it to allege and prove threats, intimidation or violence to stay in court. It also assigned numerous other grounds relating to matters that arose on the trial.

There is one basic question underlying the entire case which must be resolved initially, and when it is disposed of some of the other troublesome questions are eliminated. The question, as we view it, is this:

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[2] Amended Count Three follows:

"Comes the plaintiff in the above styled cause and amends its complaint by striking Count Three thereof and substituting therefor the following:

"Amended Count Three.

"Plaintiff avers that on, to-wit, October 23, 1955 it was engaged in a lawful business, to-wit, that of a common carrier by rail in interstate commerce, and that on or about said date the defendants, being employees of plaintiff, did conspire or combine to interfere with plaintiff's said business and pursuant to said conspiracy or combination did intentionally and without just cause interfere with and prevent plaintiff from carrying on said business in that they caused other employees of plaintiff, by means of intimidation or threat of force or violence, not to perform their duties with plaintiff and did thereby cause a substantially total cessation of plaintiff's operation in Jefferson, Morgan and Montgomery Counties and other places on its lines in the State of Alabama and as a proximate consequence thereof plaintiff was injured and damaged in the amount of $250,000.00 which plaintiff claims of defendants as damages in this cause."

Has the federal trial court, in a diversity case, jurisdiction of a suit for damages by a railroad company against its employes who foment and participate in a strike over individual grievances which are in process of adjustment under the statutory and contractual grievance procedures, but which grievances have not yet been submitted to the National Railway Adjustment Board, because the pre-submission procedure, as called for in the Act and also by the employment contract, have not been completed?

The appellees concede that when a dispute between individual employes and a railroad of the nature here involved—frequently known as "minor dispute"—has actually been submitted to the Adjustment Board, the railroad may enjoin a strike conducted by the brotherhood to vindicate such rights. This was the express holding by the Supreme Court in **Brotherhood of Railroad Trainmen etc. v. Chicago River & Indiana R. R. Co.**, 353 U. S. 30.

Appellees contend that a strike to vindicate such rights may not be enjoined unless the jurisdiction of the Adjustment Board has already attached. In support of this limitation on the applicability of the principle of the Chicago River case they cite **Manion v. Kansas City Terminal Transportation Co.**, 353 U. S. 927.

The case we have to decide does not fall squarely into the pattern of either of these cases. We conclude that in all essential characteristics, and in logic it much more nearly resembles Chicago River than Manion. The court in the former case called attention to the purpose of the National Railway Labor Act, using the following language:

> "This record [referring to the legislative history of the Act] is convincing that there was general understanding between both the supporters and the opponents of the 1934 amendment that the provisions dealing with the Adjustment Board were to be considered as compulsory arbitration in this limited field. Our

reading of the Act is therefore confirmed, not rebutted, by the legislative history."

Brotherhood of Railroad Trainmen etc. v. Chicago River & Indiana Ry. Co., 353 U. S. 30.

The court found that it would completely frustrate the jurisdiction and authority of the board, to which either party is entitled to take a dispute, if the economic pressure of a strike could be brought to bear to compel a favorable decision while the matter was pending for decision before the board. Here there was no issue pending before the board, because the issue was not ripe for presentation to it. The statute **requires** that disputes be processed by normal grievance procedures,[3] but if no agreement is reached, then either party may refer the dispute to the Adjustment Board.

Obviously the statutory right of either party to refer the dispute to the board would be as effectively frustrated by self-help by one of the parties in the pre-submission stage of the negotiations as it would by strike action after a submission of the issues to the board as in the Chicago River case. The harmful effects would be even more pronounced, for if a strike were permitted before or during negotiations of the grievance which are **required** by the Act, there need be no waiting period at all. It is not believed that the Supreme Court would make illegal a strike

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[3] "(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

45 U. S. C.A., Sec. 153, First (i).

commenced after grievance procedure had been completed and appealed to the board in accordance with the statutory provisions, in order to preserve the jurisdiction of the board, but would hold that a strike would be legal if it occurred before the first step had been taken, or, as here, before the first step had been completed. A strike at either stage would effectively nullify the provisions of the Act that guarantee to **either** party an assurance of a board hearing.

What we have said here does not run counter to the Court's per curiam disposition of the Manion case. There the state court had granted an injunction to prevent a strike **after** the grievance procedures had been completed and after more than six months had elapsed, during which time **either** party to the dispute could have referred the matter to the Board. The court reversed the judgment of the state court of appeals affirming the grant of the injunction, "because the dispute here is not pending before the National Railroad Adjustment Board," but in remanding the cause the court did so "without prejudice to the power of the Court of Appeals to **reinstate** its judgment if the dispute is submitted to the Adjustment Board by either party within a reasonable time." (Emphasis added.)

In the case before us neither party **could** submit the dispute to the Adjustment Board at the time of the alleged strike; thus there was no way in which the appellant here could protect its right to a board Adjudication. In Manion all the railroad company had to do on remand, in order to be entitled to a renewal of the injunction, was to submit the dispute to the Board, because all pre-submission proceedings had been completed. Here the dispute was only a few days old when the work stoppage occurred and neither party could go to the board. We think that in that posture of affairs the principle of Chicago River would apply, and that had an injunction been sought because the strike was illegal, it would lie to prevent the

frustration of the statutory grievance-adjustment procedure.

As we have noted, the trial court dismissed the first two counts of the complaint for want of jurisdiction, because, as the court said, the exclusive remedy available to the appellant (to redress the wrongs resulting from the work stoppage) was, under the Railway Labor Act, by submission to the Adjustment Board. The trial court in thus deciding must have accepted the thesis that the work stoppage itself was a dispute which must first go through the grievance procedures and then be submitted to the adjustment board. That this view of the matter is not the law is the clear teaching of the Supreme Court's decisions in both the Chicago River and Manion cases. The court did not there hold that the lower courts did not have jurisdiction over the suits for injunction because of a failure to take the issue of legality of the strike to the board. On the contrary, it affirmed the judgment, granting an injunction in the one, and reversed for a different reason in the other, significantly stating in its mandate that the state court might reinstate its injunction if either party to the "minor disputes" submitted those claims to the Board for decision. Nothing is said by the court that the "dispute" as to the legality of the work stoppage must itself be submitted to the Board rather than to the court in the first instance.

We therefore conclude that the Supreme Court has established the principle that a state or federal court has jurisdiction to adjudicate a complaint that employes are fomenting a strike before or during the orderly processing of minor grievances through the normal grievance machinery or the subsequent procedures before the adjustment board. The appellees lay much stress on **Slocum v. Delaware L. & N. R. R. Co.**, 339 U. S. 239, as depriving the courts of jurisdiction of this "dispute" between the railroad and its employes—the "dispute" being the claim

that the work stoppage was illegally caused by the appellees to the damage of appellant. We do not think this is such a "dispute . . . growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions . . ." as are required under the Act, and therefore by the Slocum decision, to be processed up to and through the Adjustment Board. This is the effect of the two decisions of the Supreme Court already discussed. Otherwise it would have held in both of them that the state trial courts had no jurisdiction to entertain the injunction suits. For a holding similar in all respects to our conclusion, see Norfolk & Portsmouth Belt Line R. R. Co. v. Brotherhood etc., 4 Cir., 248 F. 2d 34.

We hold that the trial court erred in holding that it lacked jurisdiction to consider the first two counts on their merits.

We next apply the above conclusion as to the power of the district court to entertain such a suit to the allegations of the complaint. Appellant urges the view that Count One set out a cause of action because such a cause of action was created by the Railway Labor Act itself. The count asserts that it was the duty of defendant employes under the law to exert all reasonable effort to settle all disputes between themselves and the railroad, but that they breached this "statutory duty" by causing the work stoppage rather than relying on the grievance procedure. The only language of the Act that spells out this statutory duty is found in 45 U. S. C. A., § 152, as follows:

> "First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreement or otherwise, in order to

avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

The Supreme Court has held that a major purpose of this Act was to provide a machinery for settling railway labor disputes in a manner that would prevent or minimize strikes. **T. & N. O. R. Co. v. Brotherhood of Railway & Steamship Clerks**, 281 U. S. 548. That this was a purpose of the Act is not disputed. However, it does not follow that Congress has, by this announcement of policy, even though stated in the terms of "duty," intended to or succeeded in setting up a statutory right of action for damages for a breach of this duty. Where Congress sought to set up a right of action for damages for breach of duty in other management labor situations, it enacted a statute expressly spelling out the nature of the right of action. See 29 U. S. C. A., § 187, and so also in creating a right of action in the civil rights field. 42 U. S. C. A., §§ 1983, 1985, 1986. We do not think that Congress here intended to or did create a new statutory right of action for damages of the nature declared upon by the plaintiff in Count One.

Count Two is essentially an action for wrongful interference with the contractual right of others. The trial court did not consider this count on the merits, but held that the asserted wrong was one which it had no jurisdiction to adjudicate. Whether such a cause of action is adequately alleged and is cognizable in the courts of Alabama, see **Alcazar Amusement Co. v. Mudd and Colly Amusement Co.**, 204 Ala. 509, ... So. ...., should first be determined by the trial court after adequate argument by the parties. The appellees do not discuss this issue in their brief, being content to rely on the want of jurisdiction of the court to entertain the claim. Having held that the court has jurisdiction, we now let the district court pass first on the sufficiency of the pleading to assert a claim on the remand.

The trial court dismissed Count Three as originally drawn, apparently on the theory that its ruling as to the exclusive jurisdiction of the Adjustment Board over the strike issue should control where there was only a simple allegation that the alleged strike was illegal solely because it contravened the policy of the Railway Labor Act or it interfered with contractual rights entered into pursuant to that act, or was a wrongful interference with appellant's business, but it would not be applicable if appellants alleged a concerted course of action involving threats or intimidation or force or violence. The court thus dismissed Count Three also, because it was "defective," apparently on the theory, not spelled out, that an interference with appellant's business was justified if it arose out of a labor dispute, this being simply a common law cause of action existing, if at all, under the Alabama law. By subsequently permitting the amended Count Three to stand it is apparent that the court held that such justification exists in Alabama only in the absence of violence, threats or intimidation. Cf. **United Construction Workers v. Laburnum Construction Corp.**, 347 U. S. 656. Here too the district court did not pass on the question whether, correctly applying the rule of the Chicago River case, the original count set forth a claim on which relief could be granted. The parties fully argued this point in their briefs and we think it proper for us to decide it. In the light of the fact that it is the clear duty of the Alabama courts to give effect to those decisions in determining whether the normally existing right of labor freely to strike justifies the alleged illegal conduct here, we hold that Count Three, as originally pleaded does set out a claim on which relief could be granted. The principle set down in **Alabama State Federation of Labor v. McAdory**, 246 Ala. 1, 18 So. 2d 810, that such right exists unless surrendered by contract, must be read to mean that the right can either be voluntarily surrendered by contract or, as we have held was the situa-

tion in this case, may be taken away by statute. The Alabama Supreme Court recognized possible limitations on the lawfulness of a strike by legislative action of the nature of requiring "a waiting period" in **Hotel & Restaurant Employes, etc., v. Greenwood,** 249 Ala. 1, 30 So. 2d 696, 703. This case also makes it clear that if the strike is not for a "lawful" objective this would be an exception to the generality of the rule that a strike is justifiable in Alabama. As we have heretofore indicated, the alleged strike here would not under the circumstances charged be one for a lawful objective, because it would be for the purpose of frustrating the grievance adjustment procedure which Congress set up for the orderly settling of railway labor disputes. Hence we conclude that the trial court erred in dismissing Count Three of the complaint in default of allegations of threats or intimidation by force or violence in the conduct of the work stoppage. A wilful interference with appellant's business without the justification normally flowing from a lawful strike is actionable and warrants a judgment for damages in Alabama. **Russell v. International Union,** 264 Ala. 456, 88 So. 2d 175, cert. granted 325 U. S. 915.[4]

Appellant assigns error to numerous charges given by the trial court under the erroneous view of the court that no cause of action could be maintained by plaintiff unless it could allege and prove violence, threats or intimidation. The court charged, in the language of Section 6 of the Norris-LaGuardia Act (29 U. S. C. A., § 106) that:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held re-

[4] It appears that the holding of the Alabama court is consistent with the Supreme Court decision of United Construction Workers v. Laburnum, supra, in permitting a recovery of damages in an illegally conducted strike; however, it is to be noted that certiorari has been granted in the cited case.

sponsible or liable in any court of the United States for the unlawful act of individual officers, members or agents, except upon clear proof of actual participation in or actual authorization of such acts, or of ratification of such acts as to actual knowledge thereof."

Furthermore, the court charged with respect to each separate defendant:

"23. If you are reasonably satisfied from all of the evidence in the case that defendant, J. M. Brown, Jr., at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof."

and also charged with respect to each defendant:

"26. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against J. M. Brown, Jr., unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence, not to perform their duties with plaintiff, or actually

authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence, not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence, not to perform their duties with plaintiff after actual knowledge thereof."

The effect of this last charge was to instruct the jury that the several defendants were members of an association or organization participating or interested in a labor dispute, and thus nullified the previous charge, and, contrary to all the evidence of the case instructed the jury, as a matter of law, that some union was participating or interested in the dispute. The testimony was undisputed that no brotherhood was in any way a participant in the work stoppage or interested in it in the sense that it had anything to do with it. Appellants contend that the Norris-LaGuardia Act is inapplicable in a strike fomented by individuals acting in concert or conspiracy as alleged here, and not participated in at all by the union. Having found that the alleged strike would be illegal if the allegations of the original count three are established, it may not be necessary for us to pass on this contention, since it would not be necessary for appellant to allege or prove the alleged illegal acts of threat or intimidation of force or violence; however, since the trial court may have felt that Section 6 applied also to the act of conducting an illegal strike, it may be appropriate for us to consider this contention as well.

We thing that the protection of Section 6 of the Norris-LaGuardia Act is not extended to individuals who engage in an illegal strike in which a labor organization of which they are members is not interested. We think there is nothing in **United Brotherhood of Carpenters v. United States**, 330 U. S. 395, to the contrary, for there the individuals as to whom the Supreme Court held the

protection was available were members of the Brotherhood which was a participant in the alleged conspiracy. The same is true in **National Labor Relations Board v. Marshall Co. Wheel & F. Co.**, 5 Cir., 218 F. 2d 409, decided by this court. See also **Bianchi v. United States**, 8 Cir., 219 F. 2d 182, and **Callanan v. United States**, 8 Cir., 223 F. 2d 171. We hold that if 14 different employees, of whom 13 are members of a large brotherhood and the fourteenth is a member of another, neither of which is in any way involved in the strike, engage in an illegal strike by such joint action as would make them liable under the common law of conspiracy, their responsibility for the acts of each other in furtherance of such conspiracy is determined without benefit of Section 6 of the Norris-LaGuardia Act.

Appellant complains that the trial court erred in not directing a verdict against all of the defendants. Even under the simpler theory of recovery which we find the trial court should have applied, there was nevertheless a steadfast denial by the defendants that they caused the walkout. This presented a jury issue, and we cannot say that the trial court should have directed a verdict against any of them.

The assignments of error for failure of the trial court to grant the motion for new trial as amended need not be passed on, because it becomes necessary that the case be remanded for new trial for the reasons we have already stated.

Reversed and remanded for further proceedings not inconsistent with this opinion.

A true copy.

Test:

Edward W. Wadsworth,
Clerk, U. S. Court of Appeals, Fifth
Circuit, New Orleans, Louisiana.

(Seal)

APPENDIX B.

Judgment.

Extract From the Minutes of January 24, 1958.

Louisville & Nashville Railroad Company,

No. 16,632. versus

J. M. Brown, Jr., et al.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellees, J. M. Brown, Jr., and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

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JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1957.

No. 812.

J. M. BROWN, JR., H. M. BAUM, A. R. THOMAS, J. B. OTTS, JR., WILLIAM F. PENNINGTON, OLIVER C. BREEDLOVE, HOWARD EUGENE ANDERSON, BRUCE BARNETT, M. L. HALL, J. M. WELDON, H. K. PARKER, W. L. GRISSOM, C. L. McCUTCHEON and R. H. LETCHMAN, - - - - - - - - - - Petitioners,

versus

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, - - - - - - - - - - Respondent.

BRIEF OF RESPONDENT IN OPPOSITION.

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INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	3
Statement of the Case	4–10
Argument:	11–30
1. Section 6 of the Norris-LaGuardia Act Has No Application to This Case	12–20
2. A Strike Over a Minor Grievance, While Such Grievance Is Being Handled Between the Railroad and the Union in Accordance With the Railway Labor Act, is Illegal	21–27
3. The District Court Had Jurisdiction of Counts One and Two	27–30
Conclusion	30–31
Proof of Service	32

TABLE OF CASES AND OTHER CITATIONS.

Decisions of Courts.

PAGE

Beeler v. Chicago, R. I. & P. Ry. Co., 169 F. 2d 557, cert. den. 335 U. S. 903 29

Benz v. Compania Naviera Hidalgo, S. A., 233 F. 2d 62 (C. A. 9, 1956), affirmed 353 U. S. 138..... 12

Bianchi v. United States, 219 F. 2d 182 (C. A. 8, 1955). 17

Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad Company, 353 U. S. 30..... 23

Callanan v. United States, 223 F. 2d 171 (C. A. 8, 1955) 17

Carlton v. Henry, 129 Ala. 479, 29 So. 924..... 13

Cuneo Press v. Kokomo Paper Handlers' Union, 235 F. 2d 108 (C. A. 7, 1956), cert. den. 352 U. S. 912. 12

Garmon v. San Diego Building Trades Council, ____ P. 2d ____, 33 Labor Cases 71,213 after remand in San Diego Building Trades Council v. Garmon, 353 U. S. 26..... 12

Hanson v. Union Pacific Railroad Co., 160 Neb. 669, 71 N. W. 2d 526, reversed on other grounds, 351 U. S. 225..... 22

Lawlor v. Loewe, 235 U. S. 522..... 16

Loewe v. Lawlor, 208 U. S. 274..... 16

Manion v. Kansas City Terminal Ry. Co., 353 U. S. 927 23

N. L. R. B. v. Ohio Calcium Co., 133 F. 2d 721 (C. C. A. 6, 1943)..... 14

National Park Bank v. Louisville & N. R. Co., 199 Ala. 192, 74 So. 69..... 13

Norfolk & Public Belt Line R. Co. v. Brotherhood of Railroad Trainmen, 248 F. 2d 34 (C. A. 4, 1957), cert. den. ____ U. S. ____, 78 S. Ct. 343..... 24

Russell v. International Union, etc., 64 So. 2d 384, affirmed on appeal 88 So. 2d 175, certiorari granted, 352 U. S. 915..... 12

Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239... 28, 29

PAGE

Steele v. Louisville & N. R. Co., 323 U. S. 192..... 24

United Brotherhood of Carpenters v. United States, 330 U. S. 395..... 15

United Construction Workers v. Laburnum Construction Corp., 347 U. S. 656..... 12

United States v. Kemble, 198 F. 2d 889 (C. A. 3, 1952). 14

United States v. Railway Dept. of A.F.L., 283 F. 479 (D. C., Ill., 1922)..... 16

Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515..... 22

Text Books.

15 Corpus Juris Secundum, Conspiracy, Sec. 1028.... 13

Statutes.

Norris-LaGuardia Act, 47 Stat. 71 (1932):
29 U. S. C., Sec. 106..... 2, 17

Railway Labor Act, 44 Stat. 577 (1926), as amended:
45 U. S. C., Sec. 151, et seq..... 2
45 U. S. C., Sec. 152, First..... 3
45 U. S. C., Sec. 152, Second..... 3
45 U. S. C., Sec. 153(i)..... 22
45 U. S. C., Sec. 156..... 29

Other Citations.

Congressional Record, 72d Congress, 1st Sess., Vol. 75, Part 5, page 5487—March 8, 1932..... 16

IN THE

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v.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, - - - - - - - *Respondent.*

BRIEF OF RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

There was no opinion of the District Court. The opinion of the Court of Appeals is reported in 252 F. 2d 149.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED.

Question 1.

Does Section 6 of the Norris-LaGuardia Act (47 Stat. 71, 29 U. S. C., Sec. 106) apply to a suit for damages where the defendants, members of two separate labor unions, are sued as individuals in a common-law conspiracy action, not as members of a union, for causing an illegal strike and where no union is sued and none took any part in the strike?

Question 2.

Where a minor grievance is being handled between a union and a railroad in the manner provided for by the Railway Labor Act (44 Stat. 577, *et seq.*, as amended, 45 U. S. C., Sec. 151, *et seq.*) but has not yet reached the stage at which it may be referred to the National Railroad Adjustment Board by either of the parties, may employees strike to coerce the railroad to accede to their position?

Question 3.

Does a United States District Court have jurisdiction of a carrier's suit for damages which results from a strike over a minor grievance caused by individual employees in violation of the Railway Labor Act and the governing collective bargaining agreement, against the contention that such a suit is within the exclusive jurisdiction of the National Railroad Adjustment Board?

STATUTES INVOLVED.

Section 6 of the Norris-LaGuardia Act and some of the pertinent sections of the Railway Labor Act are set forth in the Petition (pp. 3, 4).

Additional pertinent sections of the Railway Labor Act read as follows:

"§152. *General duties.*

First. DUTY OF CARRIERS AND EMPLOYEES TO SETTLE DISPUTES.

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. CONSIDERATION OF DISPUTES BY REPRESENTATIVES.

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." 44 Stat. 577, as amended, 45 U. S. C., Sec. 152.

STATEMENT OF THE CASE.

Respondent, Louisville and Nashville Railroad Company, herein sometimes called the Railroad or plaintiff, sued in the District Court for damages resulting from an illegal strike instigated by the defendants at its Boyles Yard in Birmingham, Alabama. No union was sued. The case went to the jury against fourteen[1] defendants, petitioners here,[1] thirteen of whom were members of the Brotherhood of Locomotive Firemen and Enginemen, herein sometimes called the Firemen's Brotherhood, and one of whom was a member of the Brotherhood of Railroad Trainmen.[2] The purpose of the strike, according to the plaintiff's theory, was to compel the Railroad to yield to the position of the defendants in the handling of a "minor grievance", then in the process of adjustment between the Railroad and the Firemen's Brotherhood. The evidence showed without conflict not only that the union did not sponsor the strike but that it positively forbade it (R. 279).

This case, then, involves a "wildcat" strike on the part of certain railroad employees which prevented the mandatory procedures provided for by the Railway Labor Act from being effectively followed.

On October 19, 1955, the Railroad had published a bulletin announcing that it was abolishing the "outside

[1]The terms "defendants" and "petitioners" will be used interchangeably herein.

[2]The action was dismissed as to two of the alleged conspirators during trial. One of these two was a member of a third union, the

hostler helper" positions at its Boyles Yard in Birmingham (Def. Ex. 1; R. 883, 1471). This change affected three employees, one on each shift. Copies of the bulletin were furnished to the affected employees and to the Local Chairman of the Firemen's Brotherhood (R. 1331). Hostler helpers' duties are similar to those of firemen and such employees are, therefore, represented by the Firemen's Brotherhood (R. 883).

The Firemen's Brotherhood, acting on behalf of the affected employees, immediately protested the change, and the processing of the dispute as a minor grievance under the Railway Labor Act was in progress by October 20, 1955 (Def. Ex. 6; R. 1334, 1473, 1474).

All of this was announced to the membership of the Firemen's Brotherhood at its regular meeting on the night of October 21, 1955 (R. 1335). The defendants, however, not satisfied with having the matter handled as a minor grievance as required by the Act, joined together to bring about an unauthorized strike, over the protests of union officials, to compel the Railroad to restore the jobs. Between the Friday night union meeting and the afternoon of Sunday, October 23, 1955, there was considerable talk about the abolition of the jobs and several of the defendants prepared for a strike by acquiring picket signs (R. 521, 523).

On the afternoon of Sunday, October 23, 1955, a meeting of some twenty persons was held at the home of defendant Parker. Twelve of the fourteen petitioners attended this meeting (R. 177-180, 1192). The purpose of the meeting was to discuss ways and means

of getting the hostler helper jobs restored for the benefit of the three affected employees (R. 831). Again it was made known that the matter was being handled between the Railroad and the Firemen's Brotherhood in the usual manner (R. 899). Those present were familiar with the procedure (R. 905, 906). The advisability and the legality of a strike were discussed. One of the men present, T. A. Kennedy, himself a local union official, announced that he had talked by telephone with the General Chairman of the Firemen's Brotherhood in Louisville, Kentucky, immediately prior to the meeting and that he had been instructed to tell those present *not* to strike, that the union would not authorize or support any such activity (R. 219). Kennedy's remonstrances were not effective and he was asked to leave. He and at least two other firemen left the meeting prior to its conclusion (R. 220, 221).

Immediately after the meeting all those present who were due to report for work on the next shift telephoned the Engine Dispatcher and "laid off" from work (R. 297, 299).

At about 9:00 P.M. Sunday night most of those present at the meeting appeared at a cafe immediately across the street from the gate to the Boyles Yard, and at about the same time certain employees, including some of the petitioners, went through the yard announcing that a strike was in process and that the yard would be cleared of all personnel (R. 419, 423, 311-313). Threatening language was used toward those showing any unwillingness to leave their jobs. Within a few

minutes the yard was empty of personnel and work was at a standstill (R. 424, 439, 455).

At about the same time one of the petitioners went to the passenger station in downtown Birmingham (several miles from the Boyles Yard) where he threatened the life of a colored fireman with an open knife and ordered him to "shut down" his engine and leave his job. The threatened fireman left (R. 571, 572).

On the next day other petitioners visited the Railroad's premises at Decatur, Alabama, and by the use of threats caused employees there to leave their jobs (R. 558-562, 595, 598, 606, 613).

On the following day the railroad yard in Montgomery was shut down by similar activities (R. 662, 666, 672, 673).

Throughout the strike the gates leading into the Boyles Yard were patrolled by pickets.

As a result of these activities the Railroad was completely paralyzed throughout some 200 miles of its main line and remained so until the night of October 26, 1955, when the gates were cleared and the employees were allowed to return to work.

The evidence included the testimony of more than 60 witnesses and numerous exhibits, all consuming in excess of 1,200 pages in the printed record. As might be expected, the evidence was in conflict in certain respects. We have in the foregoing summary undertaken to present enough of the factual background out of which this suit arose to enable the Court to recognize

the significance of certain rulings made by the District Court and dealt with by the Court of Appeals.

Respondent submits the foregoing to be a fair summary, sufficient for the purpose of these proceedings.

The Railroad sued the defendants in three counts (R. 1-5). These are set out in full in a footnote to the opinion of the Court of Appeals (App. A, Petition).

Count One was based on a violation of a duty imposed upon the defendants as "employees" of a railroad company under the Railway Labor Act.

Count Two charged the defendants with wrongfully causing or procuring a breach of the collective bargaining agreement between the Railroad and the Firemen's Brotherhood.

Count Three was a common-law conspiracy count charging a wrongful and malicious interference with plaintiff's business through the means of an illegal strike.

The District Court dismissed Counts One and Two on motion of the defendants on the sole ground that they involved matters within the exclusive jurisdiction of the National Railroad Adjustment Board and that the District Court, therefore, had no jurisdiction over them (R. 24-27, 105, 106).

Count Three was not dismissed with Counts One and Two but was later dismissed on the ground that it was "defective" as a matter of pleading (R. 50).[1] After the dismissal of Count Three, plaintiff amended

[1] From petitioners' statement it would appear that Count Three was dismissed on jurisdictional grounds along with Counts One and Two. This is not the case.

its Complaint by the addition of Amended Count Three (R. 51-53) which was similar to Count Three in all material respects except that it contained the additional allegation that in causing the wrongful strike the defendants employed the means of violence and of intimidating and threatening plaintiff's other employees. Count Three as originally drafted had merely charged the defendants with wrongfully causing the strike. The means were not alleged.

The case was tried in the District Court on Amended Count Three. The trial consumed some six days.

At the conclusion of the evidence the court, in instructing the jury, read to it Section 6 of the Norris-LaGuardia Act (47 Stat. 71, 29 U. S. C., Sec. 106), and declared it applicable to this case (R. 1449, 1450, 1454, 1455, 1462). This section is set out in the Petition (p. 3). In addition, some 29 written charges relating to Section 6 and its special rule of agency were given to the jury at the request of the defendants. These were defendants' charges 23, 25, 26, 46, 47-53, inclusive; 55, 57-59, inclusive; 60, 61-70, inclusive; 74 and 75 (R. 1485-1503).

At the conclusion of the evidence and the instructions mentioned, the jury returned verdicts for the defendants.

The Court of Appeals for the Fifth Circuit reversed and remanded (App. A, Petition, p. 38). As noted in its opinion, it concluded that the District Court erred in three respects:

First, in holding that it did not have jurisdiction to try the matters presented under Counts One and Two of the original Complaint on the ground that exclusive jurisdiction of such matters was in the National Railroad Adjustment Board.[1]

Second, in dismissing Count Three of the original Complaint on the ground it did not state a claim upon which relief could be granted.

Third, in instructing the jury that Section 6 of the Norris-LaGuardia Act applied to a case in which persons are sued as individuals, not as members of a union, and no union is involved.

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[1]The Court of Appeals did not direct a trial on Count Two as stated in the Petition but remanded for further proceedings, expressly directing the District Court to determine if Count Two stated a claim under Alabama law and holding Count One did not state a claim upon which relief could be granted.

ARGUMENT.

Throughout these proceedings, in the courts below and in this Court, petitioners have persisted in treating the grievance relating to the abolition of the hostler helper jobs, on the one hand, and the unlawful strike, on the other, as a single "labor dispute". This confusion of these two totally separate controversies permeates their treatment of each of the questions argued. The distinction between them, though clear, should be emphasized because of the dogged frequency with which the two have been confused.

The hostler helper dispute was a minor grievance and was a matter in which the Railroad and the Firemen's Brotherhood were both properly interested. It was subject to ultimate referral to the Adjustment Board *if* adjustment between the parties failed. In that event, the merits of the hostler helper dispute would have been determined solely by the Board.

The strike, on the other hand, was a matter between the Railroad and its employees, particularly the instigators. The Firemen's Brotherhood was not a party to it. It grew out of the hostler helper dispute but was as separate from it as a black eye is from a boundary dispute between adjoining neighbors which leads to combat between them. The merits of a suit for assault and battery in such a case would not be dependent upon which of the combatants was right in the boundary dispute. So here the legal consequences of the wildcat strike are something apart from the required procedures when a minor grievance obtains.

The Railroad at no time has sought to have the District Court decide the hostler helper dispute or in any way deal with it on the merits. It has left that to the statutory and contractual grievance procedure. In the courts it has sought only damages resulting from the wrongful strike. These could not be obtained in any proceedings before the Adjustment Board.[1]

Respondent has felt it necessary to restate the questions presented in the Petition in order to present the propositions as fairly and simply as possible. In doing so, it takes up each of the points in the same order as in the Petition and with corresponding numbers.

Question 1.

SECTION 6 OF THE NORRIS-LA GUARDIA ACT HAS NO APPLICATION TO THIS CASE.

As a result of the District Court's dismissal of Count Three as originally drafted and its subsequent amendment pursuant to the District Court's admonition, plaintiff had the burden of proving not only that the defendants caused the strike of its employees but also that they accomplished this by intimidating other employees, threatening them with violence, etc. Since all of the defendant-conspirators did not

[1]That damages are recoverable at law for unlawful strikes and picketing, please compare *Russell* v. *International Union, etc.*, 64 So. 2d 384, affirmed 88 So. 2d 175, certiorari granted 352 U. S. 915; *Benz* v. *Compania Naviera Hidalgo*, 233 F. 2d 62 (C. A. 9, 1956), affirmed 353 U. S. 138; *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656; *Cuneo Press* v. *Kokomo Paper Handlers' Union*, 235 F. 2d 108 (C. A. 7, 1956), cert. den. 352 U. S. 912; and *Garmon* v. *San Diego Bldg. Trades Council*, ——— P. 2d ———, 33 Labor Cases 71,213, after remand in *San Diego Bldg. Trades Council* v. *Garmon*, 353 U. S. 26.

personally threaten or intimidate other employees, the rule of agency by which they were to be held responsible for the acts of one another became of paramount importance.

The defendants were charged with a conspiracy to commit the tort of a wrongful interference with the carrier's business. One of the basic principles applicable to an action of this kind is that any act done by any co-conspirator in furtherance of the common design is the act of all. This is nothing more than a rule of agency. It is universally recognized and is the law of Alabama. *Carlton* v. *Henry,* 129 Ala. 479, 29 So. 924; *National Park Bank* v. *Louisville & N. R. Co.,* 199 Ala. 192, 74 So. 69; 15 *Corpus Juris Secundum, Conspiracy,* Sec. 1028.

Instead of applying this rule, however, the District Court, after reading Section 6 of the Norris-LaGuardia Act (47 Stat. 71, 29 U. S. C., Sec. 106) to the jury, instructed that the defendants were entitled to its protection and that in order to find each of the defendants liable it was necessary that the jury be reasonably satisfied from all of the evidence that such defendant either actually participated in causing other employees of the plaintiff by means of intimidation, threats or violence not to perform their duties with the plaintiff or authorized or ratified such threats on the part of some other person. There were repeated references to the application of Section 6 in the court's oral charge (R. 1449, 1450, 1454, 1455, 1462) and in some 29 written charges requested by the defendants which were read to the jury (R. 1485-1503).

The Court of Appeals in reversing the District Court held that Section 6 was not applicable, stating:

> "We hold that if 14 different employees, of whom 13 are members of a large brotherhood and the fourteenth is a member of another, neither of which is in any way involved in the strike, engage in an illegal strike by such joint action as would would make them liable under the common law of conspiracy, their responsibility for the acts of each other in furtherance of such conspiracy is determined without benefit of Section 6 of the Norris-LaGuardia Act" (App. A of Petition, p. 38).

It is respondent's contention that the holding of the Court of Appeals is correct; that Section 6 has no application to a case of this kind, *i. e.,* where no union is involved and liability is not based on union membership; that this section was, on the contrary, intended to apply either to a suit against an organization for the unauthorized acts of an agent or to a case where it is undertaken to hold a member of such an organization, including a labor union, responsible for the unlawful act of another member or agent *solely on the basis of membership* in the organization. The legislative history of this section and the decided cases support this view. *N. L. R. B.* v. *Ohio Calcium Co.,* 133 F. 2d 721 (C. C. A. 6, 1943); *United States* v. *Kemble,* 198 F. 2d 889 (C. A. 3, 1952).

Petitioners, on the other hand, take the position that Section 6 applies in any case where the persons involved are members of a labor organization or union regardless of whether they are charged with responsi-

bility on that account alone or whether there are other grounds of liability, independent of union membership, viz:

> "We submit, however, that the correct interpretation of that section [referring to Section 6] only requires participation or interest in a labor dispute by either the union *or* an officer *or* member of the union" (Argument, Petition, p. 12).

This view seems to proceed on the theory that a union card as such carries with it a sort of built-in immunity from the common-law rules of agency. Thus, petitioners would apparently contend that whenever two or more members of a union have a private or personal dispute with their employer, each is entitled to the protection of Section 6 even though the union is in no way involved and they act together as individuals. According to this view, Section 6, which was designed to protect against the formerly prevalent concept of guilt-by-membership-alone, has become an instrument of immunity-by-membership-alone.

It should be noted that petitioners purport to rely on the *Carpenters* case (*United Brotherhood of Carpenters* v. *United States*, 330 U. S. 395) and that they suggest a conflict between this Court's decision there and the decision of the Court of Appeals below.

It is respondent's position that the Court of Appeals' conception of the proper application of Section 6 is correct and in accord with Congressional intent; that there is in fact no conflict between the decision below and this Court's decision in the *Carpenters* case (or for

that matter the decisions of any of the other circuits); that, finally, as will be shown hereafter, the basic question of whether Section 6 may be properly applied to a case of this type is not adequately presented on this record.

Historically, Section 6 grew out of the situation engendered by the well-known *Danbury Hatters* case (*Lawlor* v. *Loewe*, 235 U. S. 522; and see the same case 208 U. S. 274) and others in accord (e. g., *United States* v. *Railway Department of A. F. of L.*, 283 Fed. 479, D. C. Ill., 1922), in which all of the members of labor unions were being held responsible for the acts of agents or other members of the union *solely because of their membership.* This history is discussed in the opinion in the *Carpenters* case (330 U. S. 404).

Accordingly, when the Norris-LaGuardia Act was being considered in Congress it was repeatedly explained as remedial of the situation described.[1]

Thus Congress was concerned with relieving from the oppressive situation of responsibility based on union membership alone, not responsibility based on active participation in concerted wrongful activities independent of union sponsorship such as is presented in this case.

The language of the section itself is clear and to this effect, *i. e.*, "no . . . member of any . . . organi-

[1] *E. g.*, Congressman McKeown of Oklahoma, speaking for the bill, justified the inclusion of Section 6 in the following manner:

> "You cannot make an association of men responsible for everything that any one member of the association has done in violation of law." (Congressional Record, 72nd Congress, 1st Sess., Vol. 75, Part 5, page 5487—Mar. 8, 1932.)

zation . . . participating in a labor dispute . . . shall be held responsible . . . for the unlawful act of individual . . . members or agents, except upon . . .," etc. (47 Stat. 71, 29 U. S. C., Sec. 106).

In this case the defendants were sued as individual wrongdoers who joined together to commit a common-law tort. No union was sued. The cohesive element binding them together was the conspiracy or combination, not union membership. They belonged to two different unions—neither of which was participating in or sponsoring the strike. In fact, the union to which a majority of them belonged was trying to prevent the strike. The defendants were sued as joint tort-feasors and were properly subject to the ordinary rules of agency, including that applicable to conspiracy actions, with respect to one another's acts. They were not entitled to the special protection of Section 6 of the Norris-LaGuardia Act.

The Court of Appeals for the Eighth Circuit has dealt with this question, and its decisions are in accord with the decision of the Fifth Circuit in this case. *Bianchi* v. *United States,* 219 F. 2d 182 (C. A. 8, 1955); *Callanan* v. *United States,* 223 F. 2d 171 (C. A. 8, 1955).

There is no conflict between the decision below and this Court's decision in the *Carpenters* case. It will be recalled that in that case criminal violations under the Sherman Act were charged against employers, employers' associations and labor unions, together with officials and agents of both. The trial court failed to instruct the jury on Section 6. This Court dealt with

this single question and held the District Court was in error, stating in its opinion as follows:

> "We hold that its [referring to Section 6] purpose and effect was to relieve organizations, whether of labor or capital, and *members of those organizations* from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization without clear proof that the organization or *member*, charged with the responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration." 330 U. S. 403. (Emphasis supplied.)

It is clear that in the *Carpenters* case the Court was concerned with the liability of *organizations*, including members of the organizations, for the acts of their agents. The case did not deal directly with the question here presented, *i. e.*, membership in an organization being the sole basis of immunity of an *individual*. The portion of the opinion quoted above indicates, however, that it is only guilt by membership that is remedied and that the section was not designed to give members of unions an over-all immunity from responsibility for the wrongful acts of their own agents (however the agency may be established) in no way related to their membership in a union. If the theory of the defendant-conspirators were valid, the consequence would be that those conspirators who were union members would not be responsible for the results of the conspiracy, whereas their co-conspirators who were not

union members would be liable. No such unequal result was intended by the law.

This is made even clearer in another portion of the opinion, viz:

> "Individuals without association authority, may be guilty of such a conspiracy as this under the Sherman Act, but under Section 6 they will not be guilty *merely because they are members or officers of a guilty association.*" 330 U. S. 410. (Emphasis supplied.)

There is, therefore, no conflict between the decision below and that of this Court in the *Carpenters* case. The rule of the *Carpenters* case is strict enough when confined to its proper sphere.[1] No reason appears for its extension. Certainly it is not authority for the proposition sponsored by petitioners in this case.

Finally, on the record presented, the question as we have discussed it is not really reached. As noted in the opinion below[2] the instructions actually given by the trial court were erroneous under *any* construction of Section 6 and regardless of the issues presented by the pleadings, in view of the evidence in this particular case. The jury was told not only that Section 6 *could*

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[1] See the dissent by Mr. Justice Frankfurter, concurred in by the Chief Justice and Mr. Justice Burton, 330 U. S. 413, *et seq.*

[2] "The effect of this last charge was to instruct the jury that the several defendants were members of an association or organization participating or interested in a labor dispute, and thus nullified the previous charge, and, contrary to all the evidence of the case instructed the jury, as a matter of law, that some union was participating or interested in the dispute. The testimony was undisputed that no brotherhood was in any way a participant in the work stoppage or interested in it in the sense that it had anything to do with it." (App. A, Petition, p. 37)

apply, depending upon whether the defendants were found to be members of a union participating, etc., in a labor dispute, but that it *did* apply, *i. e.*, in effect that all of the defendants *were* members of a participating organization. In view of the Firemen Brotherhood's disapproval of the strike and of the fact that one of the most active defendants, Pennington, was a member of another union which had no interest whatever in the strike or the hostler helper grievance, it is difficult to see how the jury could have found all the defendants were members of participating unions, etc. At the very least, however, it was a jury question. Yet the District Court in effect affirmatively charged on this point in favor of the defendants in complete disregard of the evidence. This error alone required reversal.

Thus, respondent submits for the reasons assigned that the decision of the Court of Appeals, insofar as it relates to Section 6 of the Norris-LaGuardia Act, affords no proper basis for certiorari.

Question 2.

A STRIKE OVER A MINOR GRIEVANCE, WHILE SUCH GRIEVANCE IS BEING HANDLED BETWEEN THE RAILROAD AND THE UNION IN ACCORDANCE WITH THE RAILWAY LABOR ACT, IS ILLEGAL.

Petitioners' statement that "the defendants, *together with 2,500 fellow railroad employees,* walked out in a labor dispute" is not accurate. The issue raised under the pleadings was that the defendants *caused* the strike and the evidence showed the other employees were "run out" and did not "walk out". We believe, however, that argument of this point can be pretermitted, inasmuch as it is the illegality of the strike, however caused, to which this question relates. We believe it unnecessary to argue the evidence in this court.

As we read this portion of their argument, petitioners' premises are:

1. There exists a vacuum in the Railway Labor Act, in that during the period of the handling of a dispute between union and railroad officials required by the Act as preliminary to reference to the National Railroad Adjustment Board, a strike over a minor grievance is entirely legal.

2. The Railway Labor Act does not deprive employees of the right to strike over a minor grievance although such a strike may be enjoined.

The first premise is unsupportable in the light of the authorities, and is negatived, both by the legislative purpose clearly expressed in the Railway Labor Act, and by the mandate of that Act for the handling of grievances between carriers and their employees.

The major objective of the Railway Labor Act is the avoidance of industrial strife *by conference between authorized representatives of the employer and the employee, Virginian Railway Company* v. *System Federation No. 40,* 300 U. S. 515, and see *Hanson* v. *Union Pacific Railroad Company,* 160 Neb. 669, 71 N. W. 2d 526, reversed on other grounds, 351 U. S. 225.

Ancillary to this objective, and to implement its accomplishment, the Congress established the National Railroad Adjustment Board to which exclusive jurisdiction was given to decide disputes over what have come to be called "minor grievances" after handling through the preliminary stages required by the Act. Either party was given the right to invoke the jurisdiction of the Board, *but only after a failure to agree,* viz:

> "Section 153(i). The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, *failing to reach an adjustment in this manner,* the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes" (44 Stat. 578, 45 U. S. C., Sec. 153(i)). (Emphasis supplied.)

Thus, in the plainest terms Congress spelled out the mandatory procedure for the handling of disputes of the type which petitioners here contend may be settled by self-help, including a strike, up to the time of referral to the Adjustment Board.

It is argued that the rule of *Chicago River* (*Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana Railroad Company*, 353 U. S. 30) applies only where petitions are already pending before the Adjustment Board. An attempt is thus made to distinguish *Chicago River* from *Manion* (*Manion* v. *Kansas City Terminal Railway Co.*, 353 U. S. 927) by reading into the latter a holding that the *sine qua non* of relief at the hands of the courts was actual pendency of the dispute before the Board. We do not perceive any such holding in *Manion*.

In *Manion* although more than six months had elapsed since the denial of the claims had set the stage for referral to the Adjustment Board, neither the Brotherhood nor the railroad company had taken that step as contemplated by the Act. Thus the statutory grievance procedure was not being followed by the parties in *Manion*. In the instant case, the Railroad and the Union were sedulously following the statutory procedure and the dispute had not reached the stage at which it *could* be referred to the Adjustment Board.

If *Manion* meant that the parties may resort to strike or lockout at will during this preliminary stage, the Act would be self-defeating, because it would leave a hiatus of time during which, despite its stated purpose, either party could legally cripple public trans-

portation and thus frustrate the purpose of the Act. Of course, this is not the law. *Manion* does not so hold or so suggest.

As a matter of fact, it is implicit in *Manion,* in providing for reinstatement of the injunction in the state court once the statutory settlement procedure of the Act is resumed by the parties, that a strike which interferes with that procedure is prohibited. Thus, petitioners' first premise cannot be sustained in view of the legislative purpose of the Act. Cf. *Norfolk & P. B. L. R. Co.* v. *Brotherhood of R. T.,* 248 F. 2d 34 (C. A. 4, 1957), cert. den. U. S. , 78 S. Ct. 343.

In developing their second premise petitioners, conceding that a strike over a minor grievance may be enjoined, deny that damages already sustained from the wrongful economic duress may be recovered. The strike, being in violation of the Railway Labor Act, may be enjoined, they say, accepting *Chicago River,* but whatever injury is done to the Railroad *before* it obtains the restraining order is not compensable—even in a common-law tort action (Petition, pp. 16. 17). No authority is cited for this theory in petitioners' brief, and none has been found by respondent. However, this Court has held in *Steele* v. *Louisville & N. R. Co.,* 323 U. S. 192, that rights under the Railway Labor Act may be enforced by "the usual judicial remedies of injunction and award of damages when appropriate" (323 U. S., at 207). While *Steele* dealt with rights under the Act different from those involved here, we can discern no reason why the broad principle there enunciated should not apply with equal

force in respect of other rights under the Act.[1] There is, after all, no reason why there should be any more conflict with the Board's jurisdiction in a suit for damages than in an injunction suit. In neither would the merits of the primary minor grievance be material. Respondent perceives no basis for any such distinction in *Chicago River* or *Manion.*

The basic fallacy in petitioners' second premise, however, is even more clearly revealed in the statement:

> "The right to strike cannot be said to be 'taken away' by the Railway Labor Act as held by the Court of Appeals in the instant case . . .". (Petition, p. 16).

This statement is, of course, in direct conflict with the basic teaching of *Chicago River* insofar as strikes over minor grievances are concerned. This untenable position which petitioners are forced to assume indicates the difficulty with which they are confronted in attempting to overturn the decision below.

It should be pointed out that the question is not presented on this record of whether an action for damages lies for the breach of a duty imposed under the Railway Labor Act, *i. e.*, as the basis of liability. Count One of the original Complaint, drafted long before *Chicago River* was decided, was cast on such a theory but was dismissed by the District Court. The Court of Appeals upheld the dismissal on the ground that *as drafted* the count did not state a claim upon

[1] In this connection, please see and compare the cases cited in footnote 1 on page 12 hereof concerning the recovery of damages for unlawful strikes and picketing.

which relief could be granted. While respondent submits that an action for damages resulting from a strike in violation of the Railway Labor Act *does* lie if presented on pleadings properly drawn in accordance with the rule of *Chicago River,* this question is not presented on this record. The only ground of liability in this case as the record now stands is that of a wrongful interference with the Railroad's business, *i. e.,* a common-law tort.

The Court of Appeals held on the authority of *Chicago River* that a strike over the hostler-helper grievance would not be a legal strike, not by way of approving a cause of action springing directly from the Act, but in explaining why the District Court had been in error in making certain rulings, including the dismissal of original Count Three, on the apparent assumption that the defendants were free to strike over such a grievance, and to urge other employees to join them, so long as they did not employ violence or other illegal means. When petitioners say that the right to strike over a minor grievance has not been taken away by the Act, they are essentially returning to these rulings of the District Court and defending them against the impact of this Court's decision in *Chicago River.*

It must be remembered that the District Court made these various rulings, including the dismissal of original Count Three, *before Chicago River* was decided. The Court of Appeals merely applied the rule of *Chicago River* and *Manion* and held that the trial court's rulings, based on the assumption that railroad

employees have the right to strike over such a grievance, were laid in error.

In its opinion in *Chicago River* this Court thoroughly reviewed the legislative history leading to the establishment of the National Railroad Adjustment Board. This history and the Court's opinion in that case make it entirely clear that petitioners' assertion that the right to strike over a minor grievance has not been taken away cannot be sustained.

Respondent, therefore, submits that the decision below is in complete accord with the decisions of this Court in the cases mentioned.

Petitioners do not suggest any conflict with decisions from other circuits.

QUESTION 3.

THE DISTRICT COURT HAD JURISDICTION OF COUNTS ONE AND TWO.

Petitioners' question 3 is actually not presented in this Court as the case now stands.

The Court of Appeals did not decide or even suggest that the Firemen's agreement "must be construed in the first instance by the Federal District Court instead of the National Railroad Adjustment Board" (Petition, p. 17). It had no occasion even to reach this point. The Court of Appeals merely held that the District Court was in error in deciding that it did not have jurisdiction to consider the first two counts on their merits (App. A, Petition, p. 32). It is this holding apparently with which the petitioners take issue in their argument under Question 3. No useful purpose

is served by arguing a question not presented. We have, therefore, with due respect for petitioners, rephrased this question to present the point actually dealt with by the court below, *i. e.*, whether a court may entertain jurisdiction of a suit for damages resulting from a strike of railroad employees which is in violation of the Railway Labor Act as well as of a collective bargaining agreement between the railroad and the union representing certain of its employees.

The Court of Appeals answered this question in the affirmative on the obvious authority of *Chicago River* and *Manion,* distinguishing *Slocum* (*Slocum* v. *Delaware, L. & W. R. Co.,* 339 U. S. 239) (App. A, Petition, pp. 31, 32). The question was dealt with, however, purely as one of jurisdiction.

Far from holding that the trial court "must" construe the Firemen's agreement, the Court of Appeals, as previously noted, upheld the District Court's dismissal of Count One on the ground that it did not state a claim upon which relief could be granted and left it for the District Court to pass on the sufficiency of Count Two (App. A, Petition, p. 33).

Thus, at this point there is nothing before the Court to which petitioners can object. Count One is out of the case and Count Two has not yet been held to state a claim upon which relief can be granted under Alabama law. Even though it may ultimately be upheld, there is no way to know on the record before this Court what issues might be presented for trial. This would depend upon the defenses to the court asserted by the defendants. They *might* raise questions requiring

some provision of the contract to be construed. If so, this would not deprive the court of jurisdiction. See *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239, 244. On the other hand, they might not. The only defense asserted in the District Court on the former trial was one of a general denial (R. 46).[1] Whether special defenses will be raised on another trial cannot now be known. Certainly it is a distortion of the decision below to state that it held the agreement "must" be construed by the District Court. This point simply is not presented.

Aside from this, however, there is nothing in the *Slocum* case on which petitioners rely that suggests that an otherwise appropriate court does not have jurisdiction of a suit of this kind. In *Slocum* and in the other cases relied upon there was an effort to have a court decide the *primary* dispute rather than submit it to the Adjustment Board. Respondent has at no time sought to have the District Court decide the hostler helper issue. The distinction is too plain to warrant extended argument. This is merely another manifestation of petitioners' persistent confusion of the hostler helper grievance with the wrongful strike. *Chicago River*

[1]Petitioners state that they "have taken the position" and "have maintained" that the Railroad violated the Firemen's agreement, suggesting that this was raised in the District Court. This is apparently assigned as an additional reason for the construction of the Firemen's agreement. There was no such contention in the District Court. It is not mentioned in the pre-trial order (R. 46). This point was raised for the first time in the Court of Appeals. Furthermore, the thirty days' notice referred to in the agreement is that provided under Section 156 of the Railway Labor Act (44 Stat. 582, 45 U. S. C., Sec. 156). This has no application to the abolition of positions. *Beeler* v. *Chicago R. I. & P. Ry. Co.*, 169 F. 2d 557 (cert. den. 335 U. S. 903).

and *Manion* clearly indicate that courts, both state and federal, have jurisdiction over suits relating to judicial relief from a strike in violation of the Act. This in no way impairs the Adjustment Board's jurisdiction over the original grievance. Indeed, these cases stand for the protection of the Board's jurisdiction as does the decision below.

Thus, even though it is not likely that this Court will consider that the point is substantially presented here as the record stands, respondent submits there was no error in the decision below insofar as this ground is concerned.

CONCLUSION.

Certiorari should be denied in this case not only because the decision of the Court of Appeals is correct and not in conflict with other decisions, as we have demonstrated, but for another reason of practical importance. The judgment below is not a final judgment. Thus as the case now stands, if any one of the three grounds relied upon by the Court of Appeals and argued here is valid, reversal of the District Court is required. If the Petition should be granted and the decision below overturned upon one, or even two, of the grounds argued, remand to the District Court upon the remaining ground or grounds would still be necessary. Thus unless this Court should detect the likelihood that upon granting the Petition it would find the Court of Appeals in error on all three of the points argued, issuance of the writ at this time would not dispose of the controversy. A new trial would still be required.

While we recognize that this Court may grant certiorari at an interlocutory stage, we respectfully suggest that to do so in this case would not be economical of the heavily committed time of this Court.

For this and the other foregoing reasons the Petition should be denied.

Respectfully submitted,

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PROOF OF SERVICE.

I, W. L. Grubbs, one of the attorneys for respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21st day of April, 1958, I served copies of the foregoing brief on the petitioners, J. M. Brown, Jr., et al., by mailing a copy thereof, with first class postage prepaid, to the attorneys for petitioners as follows:

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